

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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Apostles on Appeal.

(IN TWO VOLUMES)

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ALASKA COAST COMPANY, a Corporation,  
Claimant of the Steamship "JEANNIE,"  
Her Tackle, Apparel, Furniture, etc.,  
Appellant,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,  
Appellee.

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VOLUME II.  
(Pages 289 to 517, Inclusive.)

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Upon Appeal from the United States District Court for the  
Western District of Washington, Northern Division.

Filed

OCT 6 - 1915

F. D. Monckton,



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(Testimony of P. H. Karbbe.)

Redirect Examination.

Q. (Mr. BOGLE.) Captain, you stated your usual time from Ketchikan to Seattle was about seventy-six hours?

A. Somewhere around there—seventy-six to eighty-two.

Q. A little over three days?      A. Yes, sir.

Q. On this trip you took approximately five days. How do you account for that?

A. Well, it is the head wind, southeast weather.

Q. On cross-examination, in answer to Mr. Kerr's question, you stated that a gale of eighty miles was nothing unusual and a gale of sixty miles was nothing unusual. On direct examination you said this was the worst weather you ever struck up there?      A. Yes, sir; so constant.

Q. Constant?      A. Yes, sir.

Q. What other gale did you encounter coming down, besides this gale which you encountered in the Gulf of Georgia? [271]

A. Well, sir, you know we had snow all the way down, snow and—inside, you know, you don't have very much seas breaking over the ship, but it blows strong all the time, just a gale of wind all straight along, but we never noticed it much because there was no sea breaking over the ship.

Q. And did you encounter any gale previous to to this gale you encountered in the Gulf of Georgia?

A. Yes, gales right along. There is that there—that—there must be something to show here. I don't remember everything; I can't remember so

(Testimony of P. H. Karbbe.)

long ago, you know, but I know we had a gale of wind right straight along. It will tell you—we were out there five days, and used to take us a little over three.

Q. Was this weather on this voyage the weather you would expect to encounter?

A. No, sir, it was too constant.

Q. Was it an unusually rough voyage?

A. Yes, sir, an unusually rough voyage.

Q. Do you know where the log-books of the "Jeanie" are?

A. No, sir, I don't. I was left off of the "Jeanie" as soon as we came in.

Q. The "Jeanie" has since been wrecked, hasn't she? A. Yes, sir.

Q. I wish you would look at this extended protest and state whether or not that correctly shows the entries of the "Jeanie's" log-book? (Handing paper to witness.)

A. Yes, sir. It states Dixon's Entrance—that must have been on the 4th. I left there on the 2d. We are in heavy gales and snow, and also on the 6th— [272]

Q. Let me ask you if that was a copy?

A. That is a copy of the log-book, yes, sir

Mr. BOGLE.—I offer that in evidence.

Mr. KERR.—I object to it on the ground that it is incompetent, irrelevant and immaterial.

Paper referred to was marked Claimant's Exhibit 2.

Q. (Br. BOGLE.) Captain, how often have you

(Testimony of P. H. Karbbe.)

ever seen gales of sixty to eighty miles of wind in Alaska waters? A. Oh, every winter.

Q. And how long do those gales continue?

A. Well, sir, sometimes they continue quite a while; sometimes you run *out them*. With a fast, speedy ship, you know, you run out of them. Of course, a slow ship you have got to lay there and take it.

Q. Have you ever encountered a gale of wind of this strength that continued for the length of time that the gales continued on this voyage, in your experience in Alaska waters?

A. Yes, sir, I saw a gale of wind right from leaving Seattle until I got back to Seattle, but it has been in ships that had lots of power.

Q. Is that a usual or unusual occurrence, to strike a gale of wind that continues as long as this gale did?

A. No, sir, I never saw it before—not that way. Of course, as I say, she was slow and she was laying and taking her medicine.

Q. Captain, whose duty is it to look after the stowage of cargo?

A. Well, it is—everything is up to the master, but then you [273] tell the mate what to do and you expect him to do it.

Q. Isn't it the mate's duty, primarily, on these vessels?

A. It is the mate's duty to do it. You tell him what you want done and he will do it.

Q. You did not see this cargo after it arrived and

(Testimony of P. H. Karbbe.)

the hatches were opened up—after the ship arrived in Seattle?

A. I was down—I was sick when we got in here and I went down one day and there was not a word said to me.

Q. You have no knowledge as to how the cargo was damaged, have you? A. No sir, I have not.

Q. Or whether water came through the decks?

A. No, sir. I don't know nothing about it.

Q. Captain, I think you stated—I am not quite sure—as to the tide when you went on this muddy bottom in Wrangell Narrows. Would you state it was the same state of tide when you went on and when you went off?

A. Yes, sir, just the same—eight foot six.

Q. In connection with these tarpaulins, you did not testify that they were new tarpaulins—all of the tarpaulins were new ones on each hatch?

A. No, sir, they were not very; they were there when I joined the ship in June.

Q. You testified as to some of the tarpaulins being new. I didn't know whether you meant they were all new.

A. No, sir. No, they were old tarpaulins, only there was one new—what we call new, that is, the latest one on each hatch.

Q. There was one new one on each hatch?

A. Well, that is the latest one, what we call a new one. [274]

Q. Were those new tarpaulins in good condition?

A. They were in good condition, as far as I know.



(Testimony of P. H. Karbbe.)

Of course that *was mate* to know.

Q. That would be up to him?

A. That would be up to him.

Q. You say you reported to the inspector when you stopped at Juneau? A. Yes.

Q. You don't know whether he made any examination or not? A. No, sir.

Q. Did he authorize you to proceed on your voyage?

A. He told me "That's all right; go ahead."

Mr. KERR.—I object to that—what he told him—as incompetent.

Recross-examination.

Q. (Mr. KERR.) What is the speed of the "Jeanie," how much, how many knots does she steam?

A. Well, you mean in weather like this?

Q. No, I mean in any weather when you were on her; take just the average weather, what would she steam?

A. Well, she would steam seven in a calm.

Q. She would steam seven knots?

A. In a calm.

Q. About eight miles an hour?

A. No, we will call that seven miles an hour.

Q. Seven knots? A. Yes. [275]

Q. Or seven miles—which is it?

A. Well, call it seven knots.

Q. Now, you were on the "Spokane," captain, a long time? A. Yes, sir.

Q. This little gale that you had out here in the

(Testimony of P. H. Karbbe.)

that could only make seven knots an hour?

A. That is about the size of it, I guess.

Redirect Examination.

Q. (Mr. BOGLE.) How long has the "Jeanie" been running out of the port of Seattle?

A. Oh, about fourteen or fifteen years, I guess.

Q. She has been on practically the same voyage during all that time, hasn't she?

A. Yes, sir, practically.

Q. And she has been practically in the same condition, hasn't she?

A. Yes, in the same condition.

Q. And who did you receive your instructions from about taking this salmon aboard?

A. I got a telegram in Juneau from Mr. Swan.

Q. He is the—

A. (Interrupting.) He is the manager.

Q. Of the charterers?

A. Yes, of the charterers.

Recross-examination.

Q. (Mr. KERR.) Captain, was it the duty of the first or the second mate to look after the hold of the vessel? [278] A. The second mate.

Q. The first mate was sort of a pilot, wasn't he?

A. Yes, sir.

Q. He didn't have anything to do with it?

A. No.

Q. When you talk about new tarpaulins, you mean that there were a lot of old rotten tarpaulins on there and there were some that were not so bad?

Mr. BOGLE.—I object to that.

(Testimony of P. H. Karbbe.)

A. No, I don't know about that part.

Q. (Mr. KERR.) You call those that were not so bad the new ones?

A. They were all—they were fair tarpaulins, all of them.

Q. You mean by "fair" they had been on there so long that they were pretty ancient, all of them, weren't they, but some of them happened to be a little more modern than the others?

A. We made one trip with the same tarpaulins.

Q. If you did you got salmon that time, didn't you?     A. No.

Q. Did you have any salmon on that trip?

A. No, I don't think we did. I think I cleaned out all the places. We may have.

(Witness excused.) [279]

**[Testimony of R. E. Small, for Claimant.]**

R. E. SMALL, being recalled on behalf of claimant and respondent, testified as follows:

Q. (Mr. LAWRENCE BOGLE.) Mr. Small, at the time of your former examination I asked you if you had any record of the amount of salmon of the grade known as chums, belonging to the Alaska Pacific Fisheries, sold by you during the month of January, 1913?

A. I find that—you want me to tell the number—the quantity sold during that period, that I was obligated to deliver, which is the same thing practically?

Q. Well, you might segregate it by telling first the amount that you were obligated to deliver for the libelant in this case—     A. Yes.

(Testimony of R. E. Small.)

Q. (Continuing.)—during the month of January and afterwards, the salmon that you sold during that month, to be delivered in that month?

A. Yes. I might say—I might answer that question by saying that it was so trifling that it is hardly worth considering, of any actual sales made during that month. I can give you the sales that were—well, I will make the direct statement: About 8,500 cases of chums sold during that period.

Q. Were those all sold—

A. (Interrupting.) They were not shipped in January.

Q. When? A. They were shipped in February.

Q. They were sold at—

A. (Interrupting.) They were sold sometime during the [280] month of January.

Q. For— A. For February shipment.

Q. Were those all shipments of the Alaska Pacific Fisheries? A. Yes, sir.

Q. And those were all of the brand known as chums? A. The grade known as chums.

Q. Have you got the brand? A. Yes.

Q. What were the brands?

A. There was 4,000 under the Spear brand, 1500 under the Trolling brand, and 3,000 under the Antler brand.

Q. Mr. Small, do your records show to whom you sold the 4,000 of the Spear brand?

A. Yes; Pacific Commercial Company, Manila.

Q. And 1500 Trolling? A. Yes, same parties.

Q. And they were shipped on what date?

(Testimony of R. E. Small.)

A. On February 8th, is the date. I have a shipment on that.

Q. They were shipped on that date, were they?

A. Yes, that is the date of shipment.

Q. Did you sell any other grades?

A. No. I shipped—I shipped out sales that were made on a contract, Mr. Bogle, of pinks; you are confining your questions all to chums or all grades?

Q. No, pinks now?

A. Well, pinks, I had a balance of a contract we shipped out on January 25th, 1500 cases.

Q. To whom did they go. [281]

A. They went to a concern by the name of Cluet & Company, in Singapore, Strait Settlement.

Q. And they were shipped on what date?

A. January 25th.

Q. Did you ship any other pinks during the month of January?

A. Well, the rest are trifling amounts, Mr. Bogle, that went out in cars, that the exact date is not specified; as to just when they rolled I can't tell exactly. These large amounts show specifically when they did; but we ordered them out and the time of shipment is not designated clearly, you know. They are strung along so that I could tell—in taking off a transcript of this I simply stated the small amounts would be grouped together in those—during that period from January 8th to March 21st.

Q. How much did it amount to?

A. The total amount, including the 1500 cases of

(Testimony of R. E. Small.)

pinks that went to Cluet, amounted in small shipments up to 4,234.

Q. That includes the 1500?

A. That includes the 1500.

Q. Now, those were all for the Alaska Pacific Fisheries? A. Yes, sir.

Q. Did you ship any other brands or grades for them during the month of January?

A. During that period I shipped 708 cases of reds.

Q. That is, from January 8th to March 21st?

A. January 8th to March 21st.

Q. How many was that?

A. 708 cases of reds—comparatively small amounts.

Q. Do you know where they went? [282]

A. No, I don't.

Q. Do you know when they were shipped?

A. No, not exactly.

Q. Various times?

A. Various times. And 166 cases of medium reds, and 100 cases of halves, same grade. That is all, that comprises the entire shipments of that, making a total of 13,708 cases during that period.

Q. What were the brands, pinks?

A. Yes, I have the brands, I can show you the brands in detail. The Mandarin brand was the brand shipped on the 1500 cases.

Q. And what were the other brands?

A. There was 422 cases of Black Top; 91 cases of Victor; 115 cases of Surf.

Q. How many was that, 115?

(Testimony of R. E. Small.)

A. 115. Then we shipped an unlabeled lot out, 861 cases; and 100 cases of Black Top; 200 cases of Antler—wait a minute now, that is in wrong, that Antler does not belong in that or should have gone in the chums, that Antler is a chum brand; he has got it in wrong here, that should not go in, strike that out—that 200 Antler.

Well, there is 452 cases of unlabeled; 50 cases of Bugle; 268 cases of unlabeled; 100, Victor, and 75 Bugle; that is all the pinks.

Q. And what were the reds, the brand of the reds?

A. The brand was Sea Lion in all instances, with the exception of 50 cases, 50 cases were unlabeled; 278 cases in one lot, 80 in another and 50 in another.

Q. That comprised all the salmon that was sold by you for account [283] of Alaska Pacific Fisheries from January 8th to March 25?

A. Yes, that is all.

Q. March 21st?

A. Yes, March 21st, obligated for delivery.

Q. Obligated for delivery? A. Yes, sir.

Q. Did you sell any salmon for the Alaska Pacific Fisheries which you were unable to deliver during that period? A. No, sir.

Q. Do your records show the amount of salmon which was on hand in the warehouse at Seattle, subject to your orders, on January 8th, 1913, belonging to the Alaska Pacific Fisheries?

A. Have I that record?

Q. Yes. A. Yes, sir.

Q. I wish you would give me that record.

(Testimony of R. E. Small.)

A. I have the record of 1,269 cases of reds—red talls that means.

Q. Do you know how many of those were on the—

A. (Interrupting.) Yes, exclusive of the “Jeanie” cargo.

Q. Exclusive of the “Jeanie” cargo?

A. Yes. The question that you are driving at is to show that there was stock on hand exclusive of the “Jeanie” cargo?

Q. Yes, exactly. A. Yes, I understand.

Q. The 1,269 cases of reds were all of this Sea Lion brand?

A. Yes, they were practically—all but 117 cases were of [284] Sea Lion brand.

Q. And what were the 117?

A. Unlabeled. Applied them wherever we chose.

Q. And what other salmon did you have on hand?

A. We had 2,384 cases of King talls unlabeled.

Q. Were those reds?

A. Those are a Chinook salmon. They are practically a—but they don't come into the regular grades at all.

Q. You are familiar with the cargo which was aboard the “Jeanie”?

A. Yes, in a general sort of a way.

Q. I will ask you if any of the cargo aboard the “Jeanie” was of this brand which you have last mentioned? A. Oh, this Sea Lion?

Q. No, of this Chinook salmon?

A. Oh, no, this is all unlabeled—this stuff is unlabeled.



(Testimony of R. E. Small.)

Q. And what other salmon was there?

A. Well, 1,206 cases of tall medium reds; they were all under one brand—the Empire brand; and 1,539 halves of the same grade—medium reds—under the unlabeled; they were unlabeled. And under pinks 10,152 cases, a total made up in detail of 591 Mandarin and 3,949 Rajah, 2,267 Black Top, 1,882 Surf, 173 Bugle and 1,290 Victor. That is the detail on that. And 17,767 cases of Chums, comprising 1,471 Trolling, 1,736 Spear, 3,827 Trolling, 3,536 Spear, 3,808 Antler, 3,389 unlabeled, and 1,184 halves, unlabeled—no, 1,184 Antler Chums, halves.

Q. That was on hand on January 8th?

A. 8th, yes.

Q. Did you receive any other shipments between January 8th [285] and March 21st?

A. I think I testified to that in my former—but I have forgotten what I said—I think I looked that up at the time. I think that appears in my testimony, Mr. Bogle. I didn't post myself in regard to whether there was at this time.

Mr. BOGLE.—Well, I have not had a chance to go over it, Judge. If it does not appear, I suppose we can stipulate about it.

The WITNESS.—I will make a notation of that and get that; but I think I testified in regard to that before.

Mr. BOGLE.—If it does not, I suppose, Judge, we may enter a stipulation on that.

Judge HANFORD.—Yes.

The WITNESS.—It is very easy to give you that.

(Testimony of R. E. Small.)

Q. (Mr. BOGLE.) Mr. Small, did you receive any orders for any salmon of the grade which was comprised or included in the January shipment, during this period from January 8th to March 21st, which you were unable to fill? A. No, sir.

Q. Did you have sufficient salmon of all those grades on hand to fill all orders?

A. Yes, sir. Now, Mr. Bogle, we filled—just to elaborate a little on my—perhaps before he takes it down—I will just put this question to you: We filled—some of these orders that I have told you that we had, we filled them out of the “Jeanie’s” cargo because it happened to be convenient, only.

Q. Well, now, what do you mean by that?

A. Well, now, for instance, here we filled this Pacific [286] Commercial. Company, on Spear Chums and Trolling Chums, we filled because we were in the process of overhauling it at that time of the shipment and we would use those instead of using stock that we already had in stock, that we could have used.

Q. Was that because this—

A. (Interrupting.) Just a minute, Mr. Bogle. I have answered that a little incorrectly, I would like to qualify my statement. I just want to get myself a little bit—no, I think my statements are correct, Mr. Bogle. I used them, but I didn’t have to use them.

Q. You had plenty of other salmon of the same grade? A. Yes.

Q. Then, as a matter of fact, Mr. Small, did the

(Testimony of R. E. Small.)

Alaska Pacific Fisheries lose any market or lose any sale of salmon because of the damage to the "Jeanie" salmon?

A. I can't say that thye did; no, sir.

Q. Why did you use a portion of this "Jeanie" salmon, Mr. Small, in preference to salmon which you had in stock?

A. Simply as a matter of convenience, because it was being overhauled and we would apply it conveniently.

Q. This salmon had been overhauled and freshly labeled? A. And freshly labeled.

Q. And in first-class condition?

A. In first-class condition; after the overhauling we let it go out.

Q. You knew that salmon was all right?

A. Absolutely.

Q. Without any inspection?

A. Without any inspection. [287]

Q. The other salmon you would have to test, wouldn't you, go over it?

A. We would naturally inspect it to some extent before it went out.

Q. What would that inspection consist of?

A. Oh, just a cursory examination, opening up a few cases here and there, to see that it was in good condition. We don't go to the extent of opening up every case or anything of that sort. If we found any trace of any trouble, we would probably make more extensive examination.

Q. You do, however, go over the cases to find out,

(Testimony of R. E. Small.)

a case here and there?

A. Yes, here and there to see—

Q. (Interrupting.) To see if it is in proper condition? A. Yes.

Q. Do you very often find that it has to be—cases have to be cleaned, Mr. Small?

A. We occasionally run across cases where we have to eliminate some of the cases, for stain or something, or perhaps a little shaky or something of that sort. Generally speaking, before we ship on these long voyages we re Cooper the whole thing.

Q. What do you mean by that?

A. Well, we re nail it, you know, to see that the cases are in proper shape for shipping.

Q. What is the expense of that?

A. Oh, trifling, three cents a case, maybe four cents a case; I have forgotten just what the price is.

Q. That is the re nailing? [288]

A. For re nailing, yes.

Q. If you find some of the cases are dirty, do you require them to be replaced with new cases entirely?

A. Well, it depends; that would be entirely to the extent, you know. I could not state where the dividing line would be; might be a slight—if there was only just a small stain here and there, we probably would not pay any attention to it, but if the case was defaced to considerable extent we would probably eliminate it entirely.

Q. Did you ever call for any of this salmon from the “Jeanie” shipment and were unable to get it

(Testimony of R. E. Small.)

for delivery, Mr. Small?

A. I don't recall any such instance.

Cross-examination.

Q. (Mr. Judge HANFORD.) I am not sure if I understood you, Mr. Small, in regard to these lots of unlabeled salmon. Were they marketed in that condition, unlabeled?

A. Yes, they were marketed in that condition.

Q. Will you explain why that was?

A. Oh, probably somebody wanted them unlabeled—shipped unlabeled and put their own labels on at the other end themselves, which is not an uncommon occurrence in our business.

Redirect Examination.

Q. (Mr. BOGLE.) This paper which you handed me is the opening [289] prices of the various—

A. (Interrupting.) That is the opening prices of the season of 1912, for the pack of 1912.

Q. Do you know what this salmon you sold in the months of January, February and March—what you sold that for, what you got for it?

A. Well, I don't recollect, I don't know just that; I can very easily furnish that information, but I haven't it with me.

Q. Do you know for what price the "Jeanie" salmon sold?

A. No, I don't know. The price, as I testified in my testimony—in my direct testimony, there was a very considerable fluctuation for this period; we had a very ragged market and there were quite a good many goods.

(Testimony of R. E. Small.)

Q. That was because of the condition of the market?

A. Yes, the market conditions were very unhappy during the spring of 1913.

Q. That had nothing to do with the damage to the "Jeanie"—

A. (Interrupting.) No, not the slightest.

Q. You didn't get a smaller price for this salmon—

A. (Interrupting.) Not a particle; had no bearing whatever.

Q. It had no bearing upon the sale of the pack of the Alaska Pacific Fisheries?

A. Not at all. The condition of the "Jeanie" cargo, after it was properly overhauled, was in just as good condition as any salmon there was packed.

Q. I mean the fact that this salmon was damaged did not affect the sale of the pack by the Alaska Pacific Fisheries? A. No, sir, not at all. [290]

Q. And the delay in reconditioning the salmon did not affect the returns which they got from it?

A. Not at all.

Mr. BOGLE.—I will introduce this in evidence.

The paper designated "Opening Prices August 23d, 1912," was marked Claimant's Exhibit 3, same being attached hereto and returned herewith.

(Witness excused.) [291]

[Testimony of W. C. Dawson, for Claimant.]

Seattle, Washington, July 1, 1914.

Present:

Judge C. H. HANFORD, for Libelant.

Mr. LAWRENCE BOGLE, for Claimant.

W. C. DAWSON, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. BOGLE.) *That is your business?*

A. I am in the shipping and warehouse business.

Q. How long have you been in the shipping business? A. Twenty-four years.

Q. During that time have you been acting as manager of steamship lines—you have not been actively in sea-faring life? A. No.

Q. You have been managing lines?

A. My work has been, in the office at first and afterwards in the operating department.

Q. Mr. Dawson, in the year 1912, were you interested in the charter of the steamship "Jeanie"?

A. Yes, sir, with Mr. W. F. Swan.

Q. Do you remember when that charter went into effect, Mr. Dawson, roughly?

A. My recollection is the early part of the year. I think about the 1st of April; I would not be sure about that.

Q. Do you know what condition the steamship "Jeanie" was in at the time you took her over?

A. She was in first-class condition.

Q. Was she inspected at that time for the purpose of determining what condition she was in?

A. Not to my knowledge. [292]

(Testimony of W. C. Dawson.)

Q. Do you know whether or not the steamship "Jeanie" was in drydock while she was under charter to you?

A. Yes, sir; she was in drydock after that; it was in the month of July.

Q. I do not suppose you know what repairs were made on her at that time, do you?

A. I cannot say at this time.

Q. While she was under charter to you and Mr. Swan, in what trade was she engaged?

A. She was between Puget Sound and South-eastern Alaska ports.

Q. Mr. Dawson, were any repairs or necessary work done on the "Jeanie" subsequent to July, 1912, and prior to the time of this voyage in December, 1912?

A. I have no recollection except the work that was done in the drydock in July; there was some calking done on the vessel in September, around her decks and around her stem.

Q. I hand you this paper and ask you if that is a copy of the bill for calking?

A. Yes, sir, that is the bill of King & Winge; it covers the calking I refer to.

Q. Does that show the work that was done on her in September, 1912? The work that was done on the decks? A. Yes, sir.

Q. Just in a general way, what did that work consist of?

A. I do not know any better way to show that than by reading the bill.



(Testimony of W. C. Dawson.)

Q. I want to offer that in evidence; but is that for calking? [293]

A. That was for calking around her stem and around one of the winches. The deck was reported leaking around one of the winches on the previous voyage, and the vessel was supposed to have taken a little water around the stem under the sheathing, which was stripped off and calked.

Q. Who reported this condition to you?

A. The master.

Q. The master of the "Jeanie"?

A. Yes, sir. I think he reported it to Mr. Swan; I do not know that it was reported to me at all.

Mr. BOGLE.—I offer this bill for the purpose of showing the repairs done at that time.

Paper marked Claimant's Exhibit 4, filed and returned herewith.

Q. Have you ever had wooden vessels under your management in the steamship business?

A. Yes, sir.

Q. Ordinarily, how often is it necessary to calk decks of wooden vessels engaged in the Alaska trade?

A. I should think that a prudent operator would overhaul the decks at least once a year.

Q. And if there was any damage to the deck or any repairs necessary, who notifies you of that fact?

A. The master, ordinarily.

Q. Does the master report to you—did he report to you previous to this voyage in December, 1912, that there were any necessary repairs to the "Jeanie"?

(Testimony of W. C. Dawson.)

A. I have no recollection of any such report except in this instance that this bill covers (exhibit 4).

[294]

Q. I mean immediately prior to this voyage in December. A. No, sir, not to my knowledge.

Q. If any such report had been made in the course of business, would you have had the necessary repairs done?

A. We certainly would have, yes. The vessel was carrying perishable cargo and it would be necessary for the decks to be tight.

Q. Mr. Dawson, were you down at the dock the day the "Jeanie" arrived on or about January 8th, 1913, with this damaged cargo?

A. I don't recollect—yes, I was at the dock when she arrived.

Q. Mr. Burekhardt and the officers of the libelant corporation, testified that on that date a meeting was held on the dock, at which you were present representing the charterers; Mr. Burekhardt was there representing the libelant company, Mr. West was present, stated to represent the insurance companies and Mr. Hall representing the dock company, at which some agreement was reached as to taking care of this cargo—this damaged cargo. Do you remember that meeting, Mr. Dawson?

A. Yes. That meeting was a few days after the arrival of the steamer, after the cargo had been discharged.

Q. Had the cargo practically all been discharged?

A. The cargo had all been discharged.

(Testimony of W. C. Dawson.)

Q. Were these gentlemen present at the meeting?

A. Yes, sir.

Q. Anyone else that you remember?

A. I think both the Burckhardts were there and my recollection is the others you have mentioned.

[295]

Q. Now at that time, Mr. Dawson, had the damaged cargo been segregated from what was considered good cargo, undamaged cargo rather?

A. The dock company had piled the damaged cases separately from the other which were not damaged—did not show damage.

Q. Had that segregation been made at the time of this meeting?      A. Yes, sir.

Q. I wish you would state, Mr. Dawson, in your own way, just what took place at this meeting between you gentlemen.

A. I was requested to go down there by Mr. Burckhardt, to ascertain the best method to recondition the cargo, and it was decided while we were there that Mr. Horner should recondition the cargo. And this was agreed upon by Mr. Burckhardt, Mr. West and myself. I asked each one individually if this was satisfactory to have Horner recondition the cargo and let the responsibility rest where it was proven to be. And under these conditions the cargo was reconditioned.

Q. Now, in speaking of the cargo, Mr. Dawson, do you mean the entire cargo of some 29,000 cases?

A. We only discussed that which was damaged at that time—which we knew was damaged.

(Testimony of W. C. Dawson.)

Q. Was that the cargo which had been segregated?

A. Yes, sir.

Q. Was anything said at all at that time about the balance of the cargo which was apparently in good condition? A. Not to my knowledge. [296]

Q. Was any agreement made with reference to this other cargo?

A. We made no agreement except that Horner would recondition that portion of the cargo which was very evident was damaged.

Q. That is what I am getting at. The agreement relates solely to that damaged cargo which had been segregated by the dock company, or did it relate to the entire shipment?

A. It related to that which had been segregated by the dock company.

Q. Did you at that time, Mr. Dawson, know that there was any damage to the other cargo?

A. No, I did not.

Q. Did Mr. Burekhardt, or the libelant, the Pacific Fisheries, at that time make any claim that the balance of the cargo was damaged?

A. I have no recollection that it was mentioned.

Q. Did the libelant in this case or any of its officers ever make a claim against you for damage to the balance of that cargo?

A. Not to my knowledge; not directly.

Q. Well, did you ever receive a claim from them directly or indirectly, that is, you personally, or the charterers of that vessel?

A. I believe a claim was presented later to Mr.

(Testimony of W. C. Dawson.)

Swan for reconditioning the cargo. But whether or not that covered the entire shipment I could not say at this time. Mr. Swan and I discussed that claim, whatever it was, but I have forgotten the amount.

[297]

Q. How long was that, Mr. Dawson, after the arrival of this vessel? In other words, how long after January 8th?

A. Well, I could not say at this time; it was a considerable period after that.

Q. Was it after the entire shipment had been reconditioned?

A. Why, it must have been, for the bill referred to the reconditioning of the whole shipment.

Q. In what shape did this bill come to you or to your company?

A. I think the bill was presented to Mr. Swan.

Q. What bill is this?

A. The bill for reconditioning the cargo; I have never seen any other.

Q. Was that Horner's bill or claim presented by the Alaska Pacific Fisheries?

A. I think it was the bill of the Alaska Pacific Fisheries which was really a copy of Horner's bill to it.

Q. Do you know whether or not the Alaska Pacific Fisheries had paid Horner's bill? A. I do not.

Q. What action did you take with reference to that bill?

A. Well now, do you want my conversation with Mr. Swan—that was all there was in connection with it.

(Testimony of W. C. Dawson.)

Q. All I want to know is whether you accepted it and agreed to pay it or whether you rejected the bill?

A. Why, we rejected the bill; we did not consider we were responsible.

Q. Did the Alaska Pacific Fisheries ever present another bill to you, make any further claim against you? A. Not to my knowledge. [298]

Q. Did you at any later time agree to pay this bill?

A. No.

Q. Did you ever have any negotiations toward settlement of it? A. No.

Cross-examination.

Q. (Judge HANFORD.) Referring to the time when there was a conference on the dock between yourself and the Burckhardts and Mr. Swan, can you recall now what was said in that conversation, in addition to your asking each one if it was satisfactory to have Mr. Horner recondition the goods?

A. The conference was for the purpose of determining—

Q. What I want to get at, Mr. Bogle has asked you leading questions here if your understanding related solely to some of the goods that were known to be damaged, or whether it included damages not yet ascertained. I want to know what was said to give you the right to say that it was limited to those which were known to be damaged.

A. There was nothing said at that time about anything except the damaged salmon.

Q. When the bill was presented to Mr. Swan, the claim of the Alaska Pacific Fisheries including the

(Testimony of W. C. Dawson.)

Horner bill, were you present when that was presented? A. My recollection is that I was not.

Q. Do you know who presented it?

A. I do not, no, sir.

Q. Do you know what it consisted of, whether there was anything in addition to the bare bill made out by Mr. [299] Horner?

A. I cannot say that there was anything additional.

Q. Was Mr. Horner himself present at the time of this conference you have referred to, when it was agreed he should recondition the damaged goods?

A. Yes.

Q. He was present. A. Yes.

Q. Was it reported to you that some of the cases which had been carried into the warehouse had been found to be damaged on being opened in the warehouse?

A. I had knowledge of that through my connection with the dock company.

Q. Did you ever at any time inspect the shipment of the Alaska Pacific Fisheries salmon as an entirety? A. No, sir.

Q. Were you present when the work was being done in the warehouse of cleaning, relabeling and fixing up these cans? A. I think I was once only.

Q. Do you know about how many employees Mr. Horner had at work there? A. I do not know.

Q. You did not take any notice of them?

A. No.

Q. While the "Jeanie" was under charter to you

(Testimony of W. C. Dawson.)

and Mr. Swan, who was the active manager of operations of the boat?     A. Mr. Swan.     [300]

Redirect Examination.

Q. (Mr. BOGLE.) Mr. Dawson, on cross-examination you said you had knowledge of the fact that this cargo was being reconditioned. How did you obtain that knowledge?

A. I am personally interested in the Virginia Street dock where the cargo was reconditioned, and I have knowledge of most everything that goes on down there.

Q. Well, of what did your knowledge consist with reference to this cargo? In other words, was there anything reported to you, or did you merely see them going over the cargo?

A. I knew from my connection with the dock company, that they were reconditioning the entire shipment. I just got that as general information. I do not know that any particular person told me that that was the case, but they might have.

Q. Did you know for whose account that was being done?

A. I presumed it was Burekhardt; I don't know who else ordered it done except Burekhardt.

Q. Did Burekhardt give you notice that it was being done and that the ship would be held for it?

A. Not that I have any recollection of.

Q. Or that he would or had made a claim for that work?

A. I have no recollection of such conversation with Burekhardt.



(Testimony of W. C. Dawson.)

Q. Who unloaded the "Jeanie" cargo and made this segregation?

A. It was unloaded by stevedores and the dock company.

Q. Who were they acting for, who employed the stevedores?

A. The ship employed the stevedores.

Q. Were they acting for the ship in that work?

[301] A. Oh, yes.

Q. Who made the segregation of the damaged cargo? A. The dock company.

Q. Who were they acting for?

A. For the consignees of the cargo.

(Witness excused.) [302]

**[Testimony of W. F. Swan, for Claimant.]**

W. F. SWAN, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. BOGLE.) What is your name?

A. W. F. Swan.

Q. Your business? A. Steamship business.

Q. How long have you been in that business?

A. Sixteen years.

Q. You were interested with Mr. Dawson in the charter of the "Jeanie" in 1912, were you?

A. Yes, sir.

Q. And were you the active operating member for the charterers? A. Yes, sir.

Q. Do you remember when the "Jeanie" was on drydock after you took her under charter?

A. Yes, sir. I remember that she was drydocked.

Q. You do not know what repairs were done at

(Testimony of W. F. Swan.)

that time, do you?     A. No, sir, I do not.

Q. Was any report made to you, Mr. Swan, as to any needed repairs or any defective or unseaworthy condition of the "Jeanie" prior to the time she sailed on this voyage in 1912?

A. I do not remember of any particular report.

Q. If any such report had been made, would not you have made the repairs?     A. Yes.

Q. And did you make any repairs?

A. Well, I cannot say as to whether I did or not. Some [303] minor repairs might have been.

Q. I mean immediately prior to the time she started on the voyage in question in 1912?

A. I do not remember that I did.

Q. Do you remember what condition the "Jeanie" was in at the time she started on that voyage?

A. Apparently in good condition.

Q. Mr. Swan, did you receive this order or make an agreement with the Alaska Pacific Fisheries for the carriage of this salmon, the damage to which was the cause of this litigation?

A. Yes, I had been carrying their freight for the season north and south bound.

Q. Had you hauled previous shipments of salmon on the "Jeanie"?     A. Yes, sir.

Q. That same season?     A. Yes.

Q. Do you remember when the last shipment was, previous to this?     A. I do not.

Q. You had hauled salmon for these same parties that year, had you?     A. Yes, sir.

Q. Was this agreement made to haul this particu-

(Testimony of W. F. Swan.)

lar salmon after the "Jeanie" had left here?

A. I do not remember.

Q. With whom did you make that agreement?

A. Mr. Burckhardt.

Q. Was the agreement to haul this salmon on the "Jeanie"? [304] A. Yes, sir.

Q. On the steamship "Jeanie"? A. Yes, sir.

Q. You were not present at this conference on the Virginia Street dock, were you? A. No, sir.

Q. Did you see this salmon at all after the "Jeanie" arrived? A. Part of it, yes.

Q. When did you see it, before or after it was unloaded?

A. Well, during the time they were discharging.

Q. Do you remember where they were taking it from at the time you saw it? A. Forward hatch.

Q. Taking it out directly underneath the hatch?

A. Yes, sir.

Q. And what was the condition of that cargo?

A. Some of the cases were wet.

Q. Mr. Swan, did the Alaska Pacific Fisheries ever make a claim upon you for this damage; if so, when?

A. I think they first somewhere about the latter part of March, they presented a bill, or else Mr. Horner presented a bill, I don't remember which. It was a bill of Horner's for reconditioning the cargo. And then if I remember correctly they presented a bill, that is, the Alaska Pacific Fisheries presented a bill sometime later.

Q. How much later?

(Testimony of W. F. Swan.)

A. Oh, I don't remember just how long it was; two or three months, I should say.

Q. Do you know whether or not Mr. Horner's bill had been paid by the Alaska Pacific Fisheries at the time the [305] Alaska Pacific Fisheries presented it to you?

A. I think that they presented a receipted bill.

Q. And made claim upon your—the amount of that, did they?

A. Yes, sir, I think that is the way.

Q. Did they ever at any time claim any other amount, any larger amount?

A. I do not remember that they did.

Q. Now, what did you do when you received this bill of Horner's; what action did you take on it?

A. I talked to Burckhardt about it. I did not take any action any more than talking to him in regard to it.

Q. Did you have any conversation with Mr. Dawson about it?     A. I think I did, yes.

Q. Well, did you agree to pay that bill, or did you reject it?

A. I did not agree to pay it. I did not have anything to pay it with.

Q. Well, did you accept the bill or reject it?

A. If I remember correctly I told them if we were responsible we were protected by insurance, and if not we would not pay it; the ship would not pay it, something to that effect. I do not remember just what the conversation was.

Q. Well, what action did you take upon the bill of

(Testimony of W. F. Swan.)

the Alaska Pacific Fisheries when that was presented to you?   A. That is the one I was talking about.

Q. That was the one. I was asking you about Horner's bill?

A. I told him too look to Mr. Burckhardt to pay it.

Q. When Burckhardt presented this other bill, you had this conversation with him, did you?   [306]

A. Yes, sir, we had several different conversations in regard to it.

Q. Did you ever, at any time, agree to pay it?

A. No, sir.

Q. Did you ever have any negotiations or make any offers to settle that account?   A. No, sir.

Q. Do you remember now, Mr. Swan, what this bill of Mr. Horner's covered?

A. I have only seen one bill and it amounted to something like \$4,200.00. I understood that it covered the total amount of charge for reconditioning the cargo in its entirety.

Cross-examination.

Q. (Judge HANFORD.) When the receipted bill was presented to you, can you recollect who made the presentation to you?

A. I do not remember that. I was under the impression that it came through the mail.

Q. Were you the active manager of the "Jeanie" during the time she was chartered to you?

A. Most of the time, yes, sir. I was away for a couple of weeks in Alaska one time; the balance of the time I was there all the time.

Q. Did you send the order to Captain Corby that

(Testimony of W. F. Swan.)

was received at Chilkoot and Yes Bay and Chomly, to bring down that salmon? A. I think I did, yes.

Q. That was on the request of Burekhardt, or some one [307] representing the Alaska Pacific Fisheries, was it? A. Yes, sir.

Q. To bring out their goods? A. Yes, sir.

Q. Did you give any special instructions to the captain about how to care for or handle the goods?

A. No, sir.

Q. Were you present here in Seattle immediately before or at the time the "Jeanie" went on her voyage north, that same voyage?

A. Yes, I was here at that time.

Q. You inspected the "Jeanie" before she left Seattle on that voyage to determine her seaworthiness or unseaworthiness? A. I did not, no, sir.

Q. Do you know if anyone else gave her an inspection immediately before she started on that voyage?

A. No, I do not know that I do.

Q. You relied upon the captain to report to you if there was anything that needed attention in regard to the condition of the ship?

A. The captain and his officers.

Q. Because they make requisitions for anything needed to be done and you assumed she was all right?

A. They had instructions always to report anything that was necessary to be done to the ship and keep her in condition to handle the cargoes. [308]

Redirect Examination.

Q. (Mr. BOGLE.) How long, Mr. Swan, does

(Testimony of G. L. West.)

it usually take the "Jeanie" to make a round trip to Alaska?

A. A voyage of 20 to 25 days, depending entirely on where she went.

Q. Has it been your custom in the steamship business to inspect or have an inspection made of your vessels engaged in short coast voyages, previous to the commencement of each and every voyage?

A. Oh, I always went down and went aboard, looked around. It was not a matter of inspection in regard to the vessel's seaworthiness, I would not be capable of that; I am not experienced enough in ship-building to state whether a vessel is seaworthy, but I inspect the vessel in regard to general up-keep, etc., cleanliness.

Q. But I say in these short coast voyages is it customary to have an inspection made before each voyage?

A. I never heard of any such thing.

Q. Is it the custom, when she receives the proper overhauling, at the proper time of year, to rely upon the master's reports?

A. Yes, sir; the master and other officers; I depend entirely on them.

(Witness excused.) [309]

**[Testimony of G. L. West, for Claimant (Recalled).]**

G. W. WEST, recalled, testified on behalf of the claimant as follows:

Q. (Mr. BOGLE.) What is your business?

A. Insurance adjustments.

Q. With what company are you connected?

A. Mather & Company.

(Testimony of G. L. West.)

Q. Insurance brokers?

A. Yes, sir; and adjusters.

Q. How long have you been engaged in that business, Mr. West?

A. About eight years; six to eight years.

Q. Were you connected with Mather & Company in that business in December, 1912? A. Yes, sir.

Q. And also in January, 1913? A. Yes, sir.

Q. Mr. West, were you present at the Virginia Street dock at the time this meeting was held between the two Burckhardts representing the Alaska Pacific Fisheries, the owner of the salmon, Mr. Dawson for the charterers of the "Jeanie," and Mr. Hall of the dock company? A. I was.

Q. I wish you to state, Mr. West, in what capacity you attended that meeting, whom you represented, and what your interest was?

A. Well, it was our duty to report to the underwriters the general run of things happening in connection with the companies and keep them advised, in other words, of all progress being made and all the details. We have no direct authority.

Q. Had your office placed any insurance on the "Jeanie" cargo? [310]

A. We placed what we call protection indemnity insurance.

Q. You placed no cargo insurance?

A. Well, it does not cover cargo generally; it only covers certain instances.

Q. You placed no straight cargo insurance on the "Jeanie's" cargo, did you? A. No.



(Testimony of G. L. West.)

Q. To what extent did you represent the insurance companies, Mr. West?

A. It is usual to keep them advised if any claim is going to be made on account of certain accident or disaster of any kind, and to tell them as much as we can about the case. And keep them informed generally.

Q. Is your agency such that you have any authority to act for or bind the underwriters?

A. It is not.

Q. I wish you would state, in your own way, Mr. West, what took place at this conference on the Virginia Street dock.

A. It was my understanding that everybody was agreeable to have Mr. Horner do the work of reconditioning the cargo that had been set aside, and the question of liability to be determined afterwards; that was my understanding of the meeting.

Q. What cargo do you refer to?

A. I refer to some 2100 cases, near that amount, that had been set aside; that was my understanding of it.

Q. Set aside for what purpose?

A. As being damaged.

Q. And the balance of the cargo was where?

[311]

A. It was in the dock, I think, in the Virginia Street dock. I really do not know.

Q. Did you, at that time, know that any of the other cargo had been damaged?

A. I knew that there was supposed to be 1200 cases

(Testimony of G. L. West.)

on the dock somewhere around, and 900 cases in the warehouse, damaged.

Q. Is that the cargo concerning which you testified that the parties agreed that Mr. Horner should recondition? A. That was my understanding.

Q. Was it your understanding at the time of that agreement that the parties agreed that Mr. Horner should agree to do anything with reference to the balance of the cargo?

A. Nothing was said, to my knowledge.

Q. Did you at that time know that there was any damage to the balance of the cargo? A. I did not.

Q. Did any of the parties mention any damage to the balance of the cargo?

A. Not to my knowledge.

Q. Was any claim ever made to you, as representative of the underwriters, by the Alaska Pacific Fisheries, for any of this damage? A. There was not.

Q. Was your agency such that you had authority to accept or act on any claim made by parties for damaged cargo?

A. Not other than to report on it and remark on it as we saw fit.

Q. I mean as to binding the Underwriters?

A. We have no authority whatever. [312]

Q. Did Mr. Horner ever present your office with a copy of his bill? A. He came in himself, yes.

Q. What did you do with reference to that bill?

A. Told him we had nothing to do with it.

Q. What did you tell Mr. Horner?

(Testimony of G. L. West.)

A. We told him that Mr. Burckhardt would have to pay that bill.

Q. Did Mr. Burckhardt or the Alaska Pacific Fisheries ever, prior to that time, or at any later time, make a claim against you or present you with a claim?     A. Not to my knowledge.

Q. Do you remember about what time Mr. Horner came in with this bill?

A. No, but I presume it was along about the latter part of March or the first of April; two or three months after the "Jeanie" arrived.

Q. Do you remember now what this bill covered?

A. Reconditioning entire cargo.

Q. Had you had any previous knowledge or any previous notice that the balance of this cargo had received any damage?     A. No.

Q. Or that the Aalska Fisheries would make any claim on account of damage to the balance of the cargo?     A. No.

Q. Mr. West, were you at the dock when the "Jeanie" arrived, or shortly thereafter?

A. I was there when she arrived; as a mater of fact, I was on her, I boarded her at a different dock.

[313]

Q. Before the hatches were opened up?

A. Yes, sir.

Q. Did you notice how her hatches were secured, or did you pay attention to it?

A. Yes. Do you want me to tell?

Q. Yes.

A. There were three tarpaulins and the usual

(Testimony of G. L. West.)

planking they put over, and this planking was corked.

Q. Were you there when the hatches were opened up?     A. I was.

Q. Did you remain there while the cargo was being unloaded?     A. I did.

Q. I wish you would state, Mr. West, the condition of that cargo as it came out of the forward hatch.

A. Directly under the hatch, about six hundred cases were wet, under what we call number 1 hatch.

Q. And did you notice any damage to cargo on the forward part of the ship?

A. Yes, sir. After we got further down in the hold of the ship, we found in the extreme forward end of the lower hold, what they call the between decks, more or less damage, I estimated about eight hundred cases; these figures are not exact, because I only estimated them.

Q. I wish, Mr. West, you would draw a little diagram to illustrate where this other salmon was located on the "Jeanie."

A. (Witness does so.) This is supposed to be number 1 hatch.

Q. Mark that No. 1 hatch. Where was the cargo that was damaged, under the hatch?

A. It was right out flush with the top of the hatch.

[314]

Q. Mark that with an X.

(Witness does so.)

Q. About six hundred cases there.

A. Yes, sir, about six hundred cases there. I only

(Testimony of G. L. West.)

took a certain number as they were swinging them out. I did not take an actual check.

Q. Indicate on that drawing where the other damaged salmon came from?

(Witness marks point with letter Y.)

Q. Now the two points that you have marked Y, how far forward is that of number 1 hatch?

A. I would say about thirty or forty feet. I really do not know; you could tell that from an actual measurement.

Q. Was there any water in the "Jeanie" at the time these salmon were taken out, so that you could trace as to where the water came from?

A. Well, the bulkhead was very wet, where they put the anchor chains; there is a bulkhead forward of the forecastle.

Q. (Judge HANFORD.) That bulkhead was wet?

A. It was damp more or less.

Q. (Mr. BOGLE.) What is that line you have running through there? A partition?

A. That is the bulkhead.

Q. Now, Mr. West, was there any salmon loaded forward of this forward bulkhead? A. No.

Q. Was there any salmon damaged between this number 1 deck and the deck—the next below deck?

A. There was no salmon in that. [315]

Q. Any cargo in there at all?

A. This was divided off. There is a little place where they keep the rope and stuff like that on part of that deck, right in there.

(Testimony of G. L. West.)

Q. Now, coming down to this second deck, for how great a distance aft of the bulkhead was the salmon damaged?

A. In this particular part not very far, I would say maybe two tiers.

Q. Two tiers aft?      A. Yes, sir.

Q. Now, in the hold, how far back did the damaged salmon go?

A. Well, there was back eight or ten tiers opposite that; might not make that much, because there was a hatchway in there and it ran directly under that.

Q. Was this damaged salmon in this between decks and the lower hold, near the middle of the ship or was it over toward the skin of the ship?

A. Right in the middle, most of it.

Q. Now take this between decks and come back aft toward No. 1 hatch, was the salmon as you went aft of the two tiers back to the point underneath No. 1 hatch damaged?

A. After you got out these wet cases directly under the hatch, it was all dry under that.

Q. I mean forward of the hatch and aft of these two tiers, was that damaged?

A. That was all dry.

Q. Now, going into the lower hold, was this salmon aft of these damaged salmon next to the bulkhead and forward of the hatch damaged?

A. No. [316]

Q. In this latter deck, immediately under the main deck, was there any salmon located there?

A. Yes, up to the second point, up to this locker

(Testimony of G. L. West.)

there that is built in, there is a bulkhead in there.

Q. And aft of this locker—you had better mark these decks A, B and C so that we can identify them.

(Witness does so.)

Q. B is the deck I have reference to as between decks and C is the lower hold.      A. Yes, sir.

Q. Now, on the deck marked A, from the point forward of the opening of No. 1 hatch, aft of this rope locker, was any of that salmon wet?

A. Not that I saw.

Q. You say there were about 800 cases along that bulkhead and about 600 cases under the hatch, which were wet; about 1400 cases. Do you know where the balance of the wet salmon came from?

A. I do not.

Q. Did you see it taken out of the ship?

A. I saw everything out of the forward part of the ship.

Q. Was all of the damaged salmon you saw in the forward part of the ship; did it come from these two places?      A. Yes, sir.

Q. Did you watch the salmon come out of the aft part of the ship?      A. I did not.

Q. Do you know what condition it was in?

A. It was reported to be in good condition.

Q. Is that the reason you did not bother? [317]

A. No.

Q. Who reported that to you?

A. I think the first mate did, he was the officer of the boat.

Mr. BOGLE.—I offer this diagram in evidence as

(Testimony of G. L. West.)

explanatory of the testimony of Mr. West.

Diagram marked Claimant's Exhibit 5, filed and returned herewith.

Q. Mr. West, did you notice any of this salmon damaged by coal-dust? Any of the boxes?

A. I noticed the top boxes in the forward hold seemed to show signs of coal-dust.

Q. How about the cases underneath the hatch?

A. They did not.

Q. Did you see any cases of salmon which showed any evidence of coal-dust whatever from any portion of the ship except in the hold next the bulkhead?

A. Well, part of it showed the coal-dust was not the part next to the bulkhead.

Q. Where was that located?

A. That was about amidships; just a little coal-dust on the top of the cases.

Q. Was that dry or wet? A. Dry.

Q. Was that about amidships under the main hatch or forward of the main hatch?

A. Just forward of the main hatch, what they call number 1 hatch. I am not sure whether they call it main or just what they call number 1 hatch.

Q. You say just forward. How far forward, Mr. West? [318]

A. Well, now, I would say it was pretty near up flush with the main hatch. That is up along the line of the forward part of the main hatch. Maybe two or three feet back there along the hatch.

Q. Did it extend much more than two feet?

A. It did not extend out under the hatch.



(Testimony of G. L. West.)

Q. That was forward of the opening?

A. Yes, sir.

Q. What I am trying to get at is, how far forward of the opening.

A. It was not over two or three feet. I don't know exactly how far it was; it was dry and for that reason I paid no further attention to it.

Q. You do not know from what cannery that salmon was loaded what grade or what brand it was?

A. Not for sure. I know what the mate said, it was from one cannery. He had it all chalked. He marks it with an X right down the tier, and it showed that was the end of it.

Q. You do not know yourself?

A. No, I don't know that.

Mr. BOGLE.—I have reports of survey made by Gibbs and Walker of the "Jeanie" for June and July, 1912. I would like to offer them in evidence without having to bring the witnesses to prove them.

Judge HANFORD.—I object as incompetent and immaterial, because *and* repairs or inspection made in July or August would not affect the question of seaworthiness in December or January.

Mr. BOGLE.—You are willing that they shall go in evidence without formal proof, subject to your objection?

JUDGE HANFORD.—Yes. I object on the ground that anything shown [319] at that time would not be material as to the showing the handling of the cargo on this voyage.

Papers marked Claimant's Exhibits 6 and 7 re-

(Testimony of G. L. West.)

spectively, filed and returned herewith.

Q. Mr. West, at the time you made the examination what was the condition of the deck, particularly along the main deck and the extreme forward part of the ship?

A. It showed signs of having had water in.

Q. Was there any water running out of it at the time?     A. No.

Q. The deck I indicate is marked D. That had signs of being wet, had it?     A. Yes, sir.

Q. Mr. West, did you make any estimate of the proportionate amount of the 2,200 damaged cases, that was damaged by coal-dust?

A. Not to anyone, except I might have made an estimate in my own mind.

Q. You watched all that cargo come out, did you?

A. Yes, sir.

Q. What proportion would you say was damaged by coal-dust and what proportion by water?

A. Well, as I say, I did not state these estimates to anyone but I think about 15% was coal-dust.

Q. Showed some coal-dust damage?

A. Yes, sir.

Q. And the balance showed what?

A. It was wet.

Q. Well, was it entirely water-damaged?

A. Well, it was all wet practically. [320]

Q. Was it all water-damaged?     A. Yes, sir.

Q. As distinguished from coal-dust?

A. Some were wet with coal-dust too, you know.

Q. Can you give us an estimate of the amount that

(Testimony of G. L. West.)

was damaged solely by water and the amount that was damaged solely by dry coal-dust, and the amount that was damaged by water and coal-dust?

Judge HANFORD.—I object, merely an estimate would not be of value in the case unless there was an accurate record made by count.

Mr. BOGLE.—I supposed that Mr. Horner had made an accurate count but he was unable to give us that. The best I can get at it is an estimate of a man who was present at the time it was being taken out. You can go ahead and answer the question, if you can.

A. I should say fifteen per cent would be coal-dust.

Q. You mean dry coal-dust?

A. Yes, sir. Most of the balance showed wet, and I could not make any division as to wet only and wet with coal-dust, because I just saw that they were wet. As a matter of fact I did not examine closely.

Q. You could not tell whether the balance had coal-dust damage or how much coal-dust damage.

A. No.

#### Cross-examination.

Q. (Judge HANFORD.) Did you keep any watch of the proceedings in reconditioning the cargo in the warehouse there? A. I did not. [321]

Q. You do not know as a matter of fact how many damaged cases were actually found to be damaged when they were doing the work of overhauling the entire lot? A. No.

Q. Do you know whether any cases were damaged that were in the hold of the ship, nearest the bottom,

(Testimony of G. L. West.)

the hold next to the floor?

A. You mean what part of the ship?

Q. Any part of the ship, forward or aft?

A. In the extreme forward part of the ship they were wet.

Q. These same cases that were the lowest down at the bottom of the pile were wet? A. Yes, sir.

Q. Next the floor?

A. Yes, in the extreme forward part of the vessel.

Q. Was there anything which indicated to you how the water got in the ship?

A. I cannot say how it got in. I can say how I thought it got in.

Q. Was there any sign of any misplacement of planks or openings of seams or anything of that kind? A. I did not see any in the hold.

Q. About the deck, did you see anything of that kind, any open seams or broken planks?

A. The extreme forward, over the anchor—I don't know what they call that, whether they call that the anchor hold or not, the seam showed where there was cracks in the seams.

Q. That was the extreme peak end, forward end of the vessel? A. Yes, sir.

Q. That is forward of this bulkhead where the salmon was? [322] A. Yes, sir.

Q. When the hatch was taken off, when you found these wet cases under the hatch, were the tarpaulins wet on the inside?

A. Everything was wet on top of the hatch, yes.

Q. The hatch cover, that is the plank covers, did

(Testimony of G. L. West.)

they seem to be all right or were they in a damaged condition? A. They seemed to be all right.

Q. Can you recollect any particular thing that was said when the agreement was made for Horner to recondition the damaged goods, by any one there in that conference? Can you recollect any particular thing that was said?

A. I recollect that it was a general agreement made that Horner should do the work on the 2,100 cases; that was my understanding.

Q. Your understanding of this. That is what I am trying to get at, if anything was said to justify you in assuming that his employment was limited to any particular number of cases or whether it included the damage to the cargo?

A. We only talked about the damaged cases.

Q. Who, if any one, made any remark about the number of cases being 1200 or 900 or 2,100?

A. We were standing by the most of them and they were referred to as damaged cargo. Nobody said anything about how many cases there were.

Q. As a matter of fact there were some wet cases on the dock and some cases inside the dock that were known or believed to be damaged?

A. Yes, stood aside in the warehouse.

Q. You never supposed that the insurers that you represented [323] would be liable for this damage under any policies issued? A. I did what?

Q. You never supposed the insurance companies that you represented were liable for this damage on any policy that they had issued?

(Testimony of G. L. West.)

A. Only liable in so far as the "Jeanie" was liable.

Q. That is the owner or charterer?

A. Made us liable when the "Jeanie" was liable.

Q. The owner or charterer had insurance that you had to look out for to pay?

A. They might have to protect them; it was a question, and still is.

Q. The owner or consignees had no insurance that gave rise to liabilities?

A. I do not know anything about his insurance.

Q. Well, Mr. Bogle questioned you about any claim being presented. The Alaska Pacific Fisheries or the consignees of this cargo had no insurance that would be a basis for a claim that they would present to you?

A. They had no insurance with us at all, that is the consignees.

#### Redirect Examination.

Q. (Mr. BOGLE.) The insurance which you placed was to protect the owners of the "Jeanie," was it not? A. Yes, sir.

Q. What is commonly known as protection and indemnity insurance? A. Yes, sir.

Q. And if the owners are, the underwriters are liable under [324] these policies?

A. In most cases they are liable.

Q. Mr. West, was there any way, without going into the locker, called the anchor locker, that the water could get into the place where the salmon was?

A. I did not see where it got in, but evidently it did get in in some way. That is the way I thought

(Testimony of G. L. West.)

it got in. I cannot say positively how it got in, but I know that is the way it looked.

Q. That was at the side of that bulkhead?

A. Yes.

(Witness excused.)

Hearing adjourned. [325]

Seattle, Washington, November 13, 1914.

Present: Mr. LAWRENCE BOGLE, for the Claimant.

Judge C. H. HANFORD, for the Libelant.

**[Testimony of Max Gunther, for Claimant.]**

MAX GUNTHER, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. BOGLE.) You are a sea-faring man, are you, Mr. Gunther? A. Yes, sir.

Q. What papers do you hold?

A. Mate's papers, chief mate's papers.

Q. How long have you been a sea-faring man?

A. I have been ever since I was 16 years old; I am thirty-three now. Seventeen years.

Q. At the present time you are mate of the "Admiral Evans"? A. Yes, sir.

Q. What is your run?

A. Up to southwestern and southeastern Alaska, as far as Kadiak.

Q. How long have you been running to Alaska?

A. About ten or twelve years—ever since 1900.

Q. What position did you hold on the "Jeanie" in the year 1912? A. Second mate.

Q. How long were you on the "Jeanie"? Altogether? A. I think about two years.

(Testimony of Max Gunther.)

Q. Commencing about what time and ending about what time?

A. I do not remember exactly what time I did start in. I was in her until the time she was wrecked, that was last year, in the summer of 1913 when she was wrecked, [326] that is when I left her. I think I was in her altogether not quite two years. I think I was in her from February until the next February, and then until in December when she was wrecked. That is about eighteen months, a little more, maybe twenty months. From February to February is one year and then until December.

Q. About twenty-two months? A. Yes, sir.

Q. Was she on the Alaska run during all that time? A. Yes, sir.

Q. Now, you were on her in December, 1912?

A. Yes, sir, that is right.

Q. That is the voyage, Mr. Gunther, on which she brought this salmon down from Alaska?

A. Yes, sir.

Q. You remember that voyage, do you?

A. Yes, sir.

Q. Mr. Gunther, what condition was the "Jeanie" in when she left Seattle on this particular voyage?

A. She was in a seaworthy condition, in my opinion.

Q. She was a wooden ship, was she not?

A. Yes, sir.

Q. Now, on your voyage from Seattle north to Ketchikan and Juneau, did you encounter any unusually heavy weather, on the north-bound voyage?



(Testimony of Max Gunther.)

A. North-bound voyage? No, sir.

Q. Did the "Jeanie" take any water on the north-bound voyage? A. Going up to Juneau?

Q. Yes. A. No, sir. [327]

Q. Any unusual amount of water, I mean.

A. No. Well, there was one day in Queen Charlotte Sound we had quite a little blow, a little rough weather, and she took over some water. I know when the captain came aft we were coming around one of the islands and it pretty near washed him off, but that was only a couple of hours.

Q. That was going north?

A. Yes, going across the Sound.

Q. Did she take any water into the ship itself?

A. No, no.

Q. Did she have any trouble taking care of the water with the pumps, going north?

A. No, not at all.

Q. Do these wooden ships always take on water?

A. They do always make a little water.

Q. Not any more than you can take care of with your pumps? A. No.

Q. Now, on your northbound voyage, do you remember the incident of stranding in Wrangell Narrows? A. Yes, sir.

Q. What was the extent of that stranding, Mr. Gunther?

A. Well, we just went on a mud bank on the other side of the buoy. We did not see the buoy until we got on the mud. It had started to snow and we missed the buoy, about I should say 200 or 500 feet,

(Testimony of Max Gunther.)

and we got on the left-hand side of the buoy and got on the mud flats.

Q. How long did she stay there?

A. We went on at five or six o'clock in the afternoon and went off again in the morning about two o'clock or half-past [328] one.

Q. Did you have any outside assistance to get off?

A. No, none at all. We just put an anchor out, a kedge anchor out, and then we hove tight so that the ship would not swing around when the tide turned; so when the water got high enough we started in and backed out.

Q. During the time you were resting on the mud bank, how were you resting? A. On an even keel.

Q. Was she in any way strained, that you could see? A. No.

Q. Did she take in an unusual amount of water after you got off this mud bank?

A. No, not that I noticed.

Q. Do you remember what your northbound cargo consisted of?

A. Consisted of coal and salt and other general merchandise.

Q. Do you remember how much salmon you took on at Chilkoot?

A. I think it was 10,000 cases or 14,000 cases.

Q. Where was that salmon stowed?

A. Stowed forward between decks and forward hold of the ship.

Q. Had there been any loose coal in the forward between decks?

(Testimony of Max Gunther.)

A. Not forward on the between decks.

Q. Had there been loose coal in the forward hold?

A. Forward hold, yes.

Q. Where was that coal unloaded?

A. At Juneau.

Q. What steps, if any, did you take to clean out the hold before putting the salmon in?

A. Well, first, we scraped it out—scraped it out with shovels, [329] then we cleaned it out and scraped it out again and then we cleaned it and swept it out again.

Q. What was the condition of the hold when you finished?

A. Well, it was as clean as we thought it was necessary to put in salmon; it was clean as it ever was.

Q. Could you get it any cleaner?

A. No, I could not get it any cleaner.

Q. How was this Chilkoot salmon stowed as to dunnage, the usual method of stowing?

A. Well, it was stowed as we always stow salmon; put dunnage underneath and dunnage in the wings to keep it away from the ship's sides.

Q. What sort of dunnage did you use underneath?

A. Well, in most places we did not have less than three inches and a half to four inches. I had big sticks 4x12 and 6x12 and put one on top of the other and then stowed the salmon on top of that.

Q. What dunnage did you use in the wings that

(Testimony of Max Gunther.)

you mentioned between the salmon and the skin of the ship?

A. We took one by six and stand that up and down to keep the salmon away from the ship's side.

Q. In your opinion, Mr. Gunther, was this salmon properly stowed?

A. Yes, it was properly stowed, in my opinion.

Q. Was it properly dunnaged?      A. Yes, sir.

Q. Did you take any precautions to keep the coal dust from *fetting* on that salmon?

A. Yes, we took tarpaulins and sails, we had an old mainsail there and an old foresail on the ship that we did [330] not use, and an old jib, we had a new jib, and we covered the salmon all up, and we took the covers underneath them under the edges and nailed them and then took battens and nailed them fast on the side of the ship, so that there would be no possibility of dust getting in the salmon.

Q. Now, after leaving Chilkoot where did you go?

A. After leaving Chilkoot to Gypsum, tried to land coal there, but it was too rough and we could not get alongside the dock, blowing southeast, so we proceeded toward Sitka.

Q. Did you land at Sitka?      A. Yes, sir.

Q. What did you discharge at Sitka?

A. Discharged coal at Sitka.

Q. Do you know how much coal you discharged?

A. I think 150 tons.

Q. Then you proceeded on your voyage. What was your *net* port?

A. Ketchikan, I think, was the next. When we

(Testimony of Max Gunther.)

went from Sitka to Ketchikan; we tried to go to Sulzer but it was too rough to make it.

Q. What weather did you encounter trying to go to Sulzer?

A. We had southwest wind, and we tried to go across to Cape Ommany, and we went inside and tried to go down Clarence Straits and got down as far as Merwin Sound and it started a southwest and snow and we concluded we would not go to Sulzer, it was rough enough there and if we had gotten outside it would have been still rougher.

Q. Going by way of Cape Ommany did you go in the open sea?     A. Yes, sir. [331]

Q. How long were you in the open sea?

A. We started out one night and we had to turn back. It was so rough we had to turn back again. We laid behind Ommany that night and started out next morning. I think it was a day and a half outside before we got into Sitka.

Q. This rough weather you struck before you got to Sitka, was it?

A. Yes. Just a minute; I think it was a day and a half, I am not sure. We started away in the morning—yes, it was a day and a half or two days before we got into Sitka.

Q. During that time did the "Jeanie" take any water over her decks?

A. Yes, she took water over the fore-castlehead and over the decks.

Q. Did she labor any in this sea?

A. She labored quite a bit.

(Testimony of Max Gunther.)

Q. Was there much sea running?

A. Yes, a big sea running for quite a while. It started to blow up and in fact we had her hove to that night, we could not steam against it and we could not turn back, so we hove her to.

Q. And lay there that night?      A. Yes, sir.

Q. Did she strain any in that seaway?

A. Yes, sir, she strained quite a bit; that is, going up and down and yawing the same as a ship would.

Q. What effect does that have on a wooden vessel?

A. Well, naturally will open up the seams and weaken her a little bit.

Q. Did you notice any unusual amount of water at this time?      A. In the bilges, you mean? [332]

Q. Yes, sir.

A. No. We kept on pumping all the time. You cannot tell exactly how much water there is in a ship at that time. I did not notice any unusual amount of water.

Q. Why cannot you tell?

A. You sound and probably get so much sounding and perhaps the water will not mark a foot in her; when you get a foot of water they keep the pumps going all the time, and she would suck one minute and the next minute she would pump.

Q. Why is that?

A. Well, the ship rolls and the water in the middle of the ship would be away up on her side between the knees and between the skin.

Q. Between the skin and the side of the ship?

A. Yes, sir.

(Testimony of Max Gunther.)

Q. Mr. Gunther, was it possible when a ship is rolling heavily in a seaway, to work the pumps properly so as to keep the water out of her bilges?

A. Well, you can work the pumps to a certain extent, like as I say.

Q. Can you work them so as to keep all the water out of the bilges?

A. No, you cannot keep it all out. One minute the pump will suck and the next minute it will be away up the side and you cannot get at that water. The only way to do is to keep on pumping whenever you can. You could not get all the water out of her, and the ship is never steady enough for the pumps to get at the water.

Q. And after your second attempt to get into Sulzer, you then went to Ketchikan, did you? [333]

A. Yes, sir.

Q. Then you unloaded the balance of your coal there? A. Yes sir.

Q. And from there, Mr. Gunther, where did you go?

A. I think we went to Yes Bay and loaded salmon there.

Q. And from there to Chilkoot? A. Yes, sir.

Q. Did you notice any damage to this cargo, prior to the time of leaving Ketchikan southbound, and, if so, when did you first notice the damage?

A. I noticed damage after we left Cape Ommany going to Sitka. I went down in the morning when it came quiet, to see how things were in the hold, after we got good weather. I came down in the lower hold

(Testimony of Max Gunther.)

and I found a plank alongside the keelson loose. The water had lifted the plank right up, a 2x12, and it was lying to one side and the water was coming out of the ship's hold and washing all over the hold.

Q. Was it getting on the salmon?

A. Getting on the salmon, yes.

Q. What caused that plank to wash up and become loosened?

A. The water being in the bilges and the ship rolling all the time, lifted that heavy board up, drewed the spikes out.

Q. Were you working your pumps all this time to keep the water down?

A. We were working the pumps whenever it was necessary. We would sound every two hours and if we thought—sometimes you put the sounding rod down and you have two or three inches of water or six inches and in five minutes if you put it down again you probably have a foot. You could not [334] see much water. And the only way to do is to put the steam on the pump and pump away as long as there was any water coming out.

Q. That, I understand, was because the ship was rolling? A. Yes, sir.

Q. Was that what caused the plank to come loose?

A. Yes sir, that was what caused the plank to come loose.

Q. Now, Mr. Gunther, did you have charge of securing the hatches at the time you left Chilkoot and also when you left Ketchikan?

A. Yes sir, I looked after the securing of the



(Testimony of Max Gunther.)

hatches. I was right there when it was done.

Q. Explain how these hatches were secured.

A. Well, they are 2x12, they were put on; there was a wedge driven on the end, that drove them right close together; then between the cracks of the hatches and they were calked with oakum.

Q. What do you mean by between the cracks of the hatches?

A. Here is a 2x12, you put one on here and another one here, and so on, and between these cracks we put oakum.

Q. That does not get into the record. You mean across the open hatches you would put boards?

A. No, we put the hatches on. We put the hatch covers on after that. First calked the hatches with oakum, and then put three tarpaulins over that.

Q. I mean, what do you calk with oakum, the hatch covers?

A. No, calked the hatches, the cracks between the hatches.

Q. By hatches you mean boards that go across the hatch?

A. Yes, boards we call the hatches. The hatches were 2x12 and they are laid right alongside of each other; it took [335] fifteen or sixteen to cover the hatch.

Q. To cover the hatch opening? A. Yes, sir.

Q. And you say they were all calked with oakum?

A. Between the hatches was oakum stuck in and drove down with a calking iron and on the ends of the hatches.

(Testimony of Max Gunther.)

Q. What else did you do?

A. Put on three tarpaulins and battens on the side and put wedges in so that they could not blow out; and put iron hatch battens over the hatches.

Q. Were all the hatches secured in that way?

A. They were all secured that way.

Q. Mr. Gunther, after the hatches were secured that way, was it possible for the water to get in through the hatches unless something works out?

A. No, not supposed to be any water get into them.

Q. Can it get in unless something works out, the oakum works out?      A. No, it cannot get in.

Q. Now, after leaving Ketchikan southbound, I wish you would describe the condition of weather that you encountered?

A. Well, we ran into a heavy gale in the Gulf of Georgia, some weather like I never seen in my life before.

Q. How long were you in that gale?

A. Well, I should judge we were in there—it was my watch on deck when it started, and it lasted until about three o'clock, about seven or eight hours, the heaviest of it.

Q. Was there much of a wind?

A. Yes, the wind, there was such a wind that it brought up quite a bit of sea so the ship took quite a lot of water. [336]

Q. Took water over her decks?      A. Yes, sir.

Q. About how hard was it blowing?

A. Well, I should think it was blowing over sixty miles an hour. It was a gale I never experienced in

(Testimony of Max Gunther.)

the Gulf of Georgia, and as far as I know nobody else aboard ship ever saw it blow as hard as it did that day.

Q. How much headway did you make against it?

A. Did not make any. It was impossible to make any headway. The only thing we could do was to heave her to, to one side or the other to keep off the shore. One minute it would be blowing and raining and the next minute it would be snow or sleet. We did not know how much leeway the ship was making, and we would keep the ship about an hour on this tack and then get her on the other side, and keep her kind of drifting back in the same direction as we had been going.

Q. Was the ship working very much in this sea?

A. She was diving considerably and lying over on one side. She would roll over on one side and then dive right into it.

Q. What would be the effect of that on a wooden ship?

A. I think it will strain a wooden ship considerably.

Q. Would it have a tendency to open up the seams?

A. Yes, sir, it would have a tendency to open up the seams.

Q. Did she take an unusual amount of water during that blow?

A. Yes, she took a lot of water forward, close to the forward hatch, and took considerable water over the forecastle, too.

Q. Do you know whether she took any water into

(Testimony of Max Gunther.)

the ship itself down the bilges or into the cargo?

[337]

A. No, I don't think she did. I didn't notice any. We did not open up anything in weather like this; we left things closed.

Q. You do not know whether she opened any of her deck seams or not, do you?

A. No. I did not notice anything, but I think she might have opened up her decks; because you could not see by looking at the decks whether the seams were open. Ships work up and down and it is liable to get water in without you seeing it. A ship does not open up so that you could see anything, anything like that.

Q. Did you have some trouble in keeping the water out of the bilges as you were coming into Sitka off Cape Ommany, when the ship was rolling so hard, was it difficult to keep the water out?

A. Yes, the ship lying over on one side once and then over to the other side when you put her on the other tack.

Q. Do you know whether or not any of this water which was between the skin and the side of the ship was blown out as it would roll up the side when lying over?

A. Yes, it naturally would blow out through the side of any crack, that was not dry or very tight, a ship rolling like that, water will wash, and the ship rolling over it will slop in against the side, slop up against the side and in any little crack it will slop through there.

(Testimony of Max Gunther.)

Q. That would go through the cracks?

A. Yes, naturally would.

Q. Do you remember when you arrived at Seattle?

A. I think it was the 16th of January, somewhere around there. [338]

Q. You haven't any date definite in your mind?

A. No.

Q. You do not remember when you started on the voyage or any of these definite dates, do you?

A. No.

Q. You could not testify to that accurately?

A. No.

Q. You do not remember the date you left Ketchikan? A. No, I could not remember that.

Q. Do you remember how long it took you from Ketchikan to Seattle?

A. I think it was between four and five days, if I am not mistaken.

Q. Did you see the extended protest that was filed on arrival at Seattle? A. No, I have not seen it.

Q. Were you at the dock when this salmon was unloaded? A. Yes, sir.

Q. Did you have charge of taking off the hatches?

A. Yes, I was the one that took off the hatches.

Q. When these hatches were taken off, Mr. Gunther, was any of the oakum worked up from the hatches?

A. No, we had to take hooks, the sailors took hooks, the hatches were so tight, you know, that we had to take a bar and stick in and break them up, and then we took the hooks and pulled the oakum out.

(Testimony of Max Gunther.)

Then after we got one hatch broke out up from underneath, then we broke off all the hatches.

Q. Did you notice any damaged cargo discharged from the "Jeanie"? [339]

A. I noticed salmon that was wet, cases.

Q. Where did that wet salmon come from?

A. There was quite a little in the lower hold that was wet, and some of it right close to the hatch underneath the deck.

Q. Was that near the forward part or aft part?

A. Forward hatch.

Q. How was this vessel trimmed when she left Ketchikan?

A. I think she was about three feet by her stern.

Q. Do you know how this cargo in the forward part of the hatch was wet, did you notice where the water came from?

A. Why, yes, the water came in through the deck right close to the hatch, near the hatch coaming, that is where it came in.

Q. Forward part of the hatch?

A. Yes, along the sides, along the hatch coaming.

Q. Is that where the seams would open up?

A. Yes, sir.

Q. Did you notice any damaged salmon or wet cases coming out of the after hatch?

A. No, I didn't notice any coming out of the after hatch.

Q. Did you notice any water coming out of the anchor locker as you were unloading?

A. There was water got into the anchor locker—

(Testimony of Max Gunther.)

when we were unloading .

Q. Did you notice any water coming out of there ?

A. No.

Q. Did you notice any water at any time in the anchor locker ?

A. Yes, there was water in there.

Q. Where was that ? [340]

A. That was on the way to Sitka. And also some water that was in there when we were in the Gulf of Georgia.

Q. Where is that anchor locker ?

A. It is right forward, on the bow.

Q. Right in the bow ? A. Yes, sir.

Q. How would the water get in the anchor locker ?

A. Well, a ship going up and down she will strain forward and the water will go in the seams.

Q. Was there any way that water could get in the anchor locker unless it went through her seams ?

A. No.

Q. Do you remember where the cargo from Yes Bay and Chilkoot was loaded aboard the "Jeanie" ?

A. Some loaded aft and some loaded forward.

Q. In the forward hold or between decks ?

A. Forward lower hold, at Yes Bay and Chomly, both places.

Q. Where was the Yes Bay and Chomly salmon ?

A. Forward and aft part of the ship.

Q. Any in the forward between decks, if you remember ?

A. Yes, it was loaded forward between decks, too, because it was only half full when we left Chilkoot

(Testimony of Max Gunther.)

and the ship was fully loaded when we left Chomly.

Q. Was there anything the matter with your pumps when you left Seattle?     A. No, sir.

Q. Was there anything the matter with the pumps when you left Juneau or Chilkoot?

A. No, sir. [341]

Q. Or Sitka?     A. No, sir.

Q. Or Ketchikan, southbound?     A. No, sir.

Q. Did you keep any record of the amount of damaged salmon?     A. No, I did not.

Q. Who unloaded the salmon at the dock?

A. There was a 'longshore boss by the name of Morrison, he looked after the 'longshoremen, Al Morrison.

Q. Who was he working for, the ship or the owner of the salmon?

A. I think he was working for Swan; he unloaded the boat for Swan. He got the longshoremen together when we came into port. I would not know the longshoremen and I would not have time to go around. He collects the men and keeps their time so that we can pay them off.

Q. Mr. Gunther, your experience in navigating in Alaskan waters in the summer and winter, have you ever on any vessel encountered as severe weather as you did on the "Jeanie" this trip?

A. No, I have not. The weather we encountered on the "Jeanie" on that trip is more so than I have seen in a long time since I have been going to sea. We had one blow after another, and it seems to me that the elements were against us on that trip and



(Testimony of Max Gunther.)

if we had turned around and went the other way the wind would have turned around and went the other way too.

Q. Was the weather you encountered on that trip, the weather that you would reasonably expect to encounter in Alaskan waters in the winter? [342]

A. No, not that kind, not as heavy weather as we encountered that trip. We did not expect anything like that. We only get weather like that once in ten years or six years. We do not encounter weather like that every winter. I have been going to sea in the winter time and I have seen heavy winds blowing but I never seen anything like that that we had that trip.

Cross-examination.

Q. (Mr. HANFORD.) What was the usual time that it took the "Jeanie" to come from Ketchikan to Seattle, in ordinary weather?

A. The amount of hours, you mean?

Q. Well, hours or days, approximately the average time?

A. Well, we used to average about seven or eight miles an hour.

Q. Well, I want the time in days or hours that she would make that run. I do not know the number of miles from here to Ketchikan.

A. I will have to figure it out myself.

Q. What is the distance? A. 657 miles.

Q. Well, the average time in ordinary weather was seven and a half—

A. Seven and a half or eight miles.

(Testimony of Max Gunther.)

Q. You mean land miles or knots?

A. Nautical miles.

Q. You cannot remember the date that you left Chomly?     A. No, sir, I cannot.

Q. You do not remember even the exact date you arrived at [343] Seattle?     A. No, sir, I do not.

Q. The coal cargo that you carried going north that was dumped in the ship in bulk?     A. Yes, sir.

Q. It the lower hold?

A. In the lower hold and also between decks; after the lower hold was full we put a little in the between decks.

Q. The lower hold was full of coal?

A. Full of coal.

Q. And some more in the between decks. And then the only other cargo she carried north was salt?

A. Salt and a little general merchandise.

Q. A little general merchandise. At what port did you discharge this coal? Did you discharge it at all at one place or carry it along to different ports?

A. No, sir; discharged some at Juneau, some at Sitka and some at Ketchikan.

Q. From Juneau you went to Chilkoot?

A. Yes, sir.

Q. And took in the salmon there that you brought to Seattle from Chilkoot?     A. Yes, sir.

Q. Where was that stowed?

A. The salmon forward was from Chilkoot.

Q. Yes.

A. It was stowed in the forward between decks and the forward lower hold.

(Testimony of Max Gunther.)

Q. Was there at that time part of the coal cargo still remaining in the lower hold and also in the between [344] decks? A. Yes, sir.

Q. Did you discharge any coal at Chilkoot?

A. No, sir; not that I remember. Sometimes we go to a cannery and they want a ton or so and we give it to them. I would not say but what we done that there also, but I do not think we did. Coming up in the winter-time to a cannery and they want a ton of coal we give it to them, but I do not think we did; I do not think we did that trip.

Q. Before taking in the salmon at Chilkoot, was any part of the space in which that salmon was stowed entirely cleared out of coal?

A. Yes, it was all clear of the coal.

Q. Clear of all coal in that particular space?

A. Yes, in fact, there was no coal in the forward between decks when we put the Chilkoot salmon—there was never any coal there. The only coal we had in the between decks was on the aft part, a little bit.

Q. Was there any bulkhead forward where you put the salmon between that and the coal that remained in the ship? A. No, sir; there was not.

Q. Where did you go from Chilkoot?

A. From Chilkoot we went to Gypsum—tried to run there and it was too rough, so we proceeded over to Sitka.

Q. And encountering rough weather you were delayed in arriving at Sitka? A. Yes, sir.

Q. How was this Chilkoot salmon protected from

(Testimony of Max Gunther.)

coal-dust at [345] the time you were putting it in the ship?

A. How was it protected from coal-dust?

Q. Yes. There were no bulkheads between there and where the coal was?

A. We put covers over the salmon, old sails and a lot of covers; we nailed the pieces at the top against the beams and the sides were battened, so that there was no coal-dust could get at the salmon.

Q. That was after the salmon was in, but while taking it in was there any protection against coal-dust?

A. There was no dust blowing at the time, we did not touch the coal; the coal was away back from where we were stowing the salmon; it was not anywheres near the salmon.

Q. Was the ship lying still?

A. The ship was lying still alongside the dock; no dust floating at all.

Q. Did the crew of the "Jeanie" handle the salmon in loading, take it out of the warehouse and truck it aboard the ship? A. Yes, sir.

Q. The ship lay right at the dock, and the warehouse was on the dock, and it came out of the warehouse into the ship?

A. Yes, sir. The salmon was stowed quite a ways from the warehouse.

Q. How far? A. From the cannery?

Q. How far, how many feet from the opening in the warehouse? A. You mean at Chilkoot?

Q. Yes. To the sides of the ship.

(Testimony of Max Gunther.)

A. You mean the open space between the ship and the warehouse? [346]

Q. Yes, the cannerymen say it was about fifty feet. Do you think that is about right, across that wharf, about fifty feet?

A. Yes, about 50 to 100 feet; I could not say exactly.

Q. You would not want to say it was more than fifty feet?

A. I have not been in Chilkoot for quite a while, I do not know just exactly how the warehouse lies. You go to so many places and you can hardly remember exactly the distance.

Q. Now, when the ship was rolling and pitching in this rough weather going to Sitka, how was that salmon in the ship protected from coal-dust then?

A. It still had them covers on.

Q. These sails that you used for covering.

A. Yes, we kept them on right along, never took them off.

Q. Where were they taken out?

A. They were taken out when we started to load salmon at Yes Bay. They were nailed fast and kept there.

Q. Where was the last of the coal cargo discharged? A. At Ketchikan.

Q. Was that after you had completed taking in the cargo of salmon at Yes Bay?

A. After we completed taking in salmon at Yes Bay.

Q. Those you took at Chomly and Yes Bay?

(Testimony of Max Gunther.)

A. Yes, we took coal out first at Ketchikan.

Q. You took the coal out at Ketchikan, then did you go to Chomly? A. I think Yes Bay.

Q. The coal was all out of the ship before you went to either of these places? [347] A. Yes, sir.

Q. During the time the ship was laboring in heavy weather before you got to Sitka, did you discover this loose plank?

A. Yes, during the time on our voyage from Gypsum to Sitka I discovered that loose plank in the lower hold, the lower forehold of the ship.

Q. Was there any cargo of coal or anything else down in that hold above that plank?

A. Yes, there was coal in the hold too but it was away back of that in the aft part.

Q. This loose plank was in the forward part of the ship?

A. No, it was right in the middle of the hatch.

Q. And the coal was in the aft part of the hold?

A. Yes, the coal was in the aft part of the hold.

Q. And this loose plank was in the clear space between? A. Between the salmon and the coal.

Q. Was it a rotten plank?

A. No, it was not a rotten plank.

Q. Had it been well spiked?

A. Yes, it was well spiked. I don't know how many spikes there was, they were all sticking in the plank and the plank just lifted up and was lying to one side like it had rolled away, and the water was washing out of the bilges all over.

Q. And the spikes that were in the plank what

(Testimony of Max Gunther.)

were they driven into? Were they driven into the frame of the ship? A. Yes, sir.

Q. The beams or cross-beams?

A. I guess it was the knees or cross-beams. [348]

Q. Were they rotten?

A. Not that I know of. I spiked the plank in again and it held; it was put back again in the same place and it held.

Q. When you were stuck in the mud going through Wrangell Narrows, was that plank underneath the coal cargo?

A. Yes, it was underneath the coal cargo then.

It did not have the same vacant space there?

A. No, it was full of coal at that time, in Wrangell Narrows.

Q. After the coal was taken out and when you cleaned the ship, did you notice anything the matter with that plank?

A. I did not notice anything the matter with the plank.

Q. Seemed to be in its place?

A. Seemed to be in its place all right.

Q. What was it, a fir plank?

A. Why, it was soft wood, I would not say whether fir or pine, it was a 2x12 or 2½x12.

Q. Is there any way you can account for the loosening of that plank except the bilge water pounded it up?

A. No, I don't know of any way it could have got loose, unless the water just beneath hammered underneath the plank until it lifted it right up.

(Testimony of Max Gunther.)

Q. What kind of a space was there in which the bilge water could accumulate underneath the interior plank of the ship and the outside plank on the bottom?

A. Well, I think right at that place it is about nine inches, something like that. Away forward it is more, it goes as much as maybe twelve inches. I don't know exactly, I didn't measure it.

Q. Now, the water in that space could not have a great deal of pressure, a great deal of force, could it? [349]

A. Well, it would have enough force to loosen the plank, working from one side to the other, washing.

Q. Did you ever know anything like that to happen in any other ship that you were ever sailing in?

A. Why, no, I never seen it. I have never had as rough weather in other ships as I had in her at that time.

Q. How did that weather that you experienced in going into Sitka at that time compare with the heaviest you have had in going to sea?

A. Heaviest weather I have ever seen on the Alaska coast.

Q. Do you know the force of the wind we had in the gale here in Seattle last night?

A. Why, no, I was asleep last night.

Q. Did not wake you up?

A. No. I did not go to sleep until twelve and I slept after that. I was ashore.

Q. Is there any way to account for the wetting of the cargo on this trip of the "Jeanie," except that



(Testimony of Max Gunther.)

it was by water that went through the seams of the ship or the leakage in the hull of the ship?

A. No, I think that is the only way the water got in, through the seams of the ship and through the seams of the deck while the vessel was straining and laboring in the heavy head sea and rolling around.

Q. Is the planking constituting the interior skin of the ship laid on close together and tight or is there a good many openings?

A. Why, it is laid on together tight, except away up above there are openings where you put the salt in to keep the wood from rotting, that is right underneath the beams. [350]

Q. It is your theory that in the rolling of the ship the bilge water swashes through some seam or opening in the skin of the ship to get on the cargo?

A. That is my opinion.

Q. Did you ever notice before the occurrence, or since then, what the condition of the skin of the ship was, as to having seams or openings in it? Did you ever see any big cracks or seams that water could swash through?

A. Why, not big cracks; I have seen little cracks where the water could get through, yes.

Q. How wide would you call these little cracks?

A. Why, you can hardly see, water would go through almost anywheres, don't need to be any crack. In fact, I will not say it was a crack, I would say where the planks were put together, it don't take much when the ship is rolling and straining for two planks joined together to get a part a

(Testimony of Max Gunther.)

little bit and the water will seep through, especially when rolling with force from one side to the other. If I had seen a crack in the ship anywheres where I thought the water would come through I would have fixed it so that the water would not have been able to come through.

Q. If the ship was steady the water would not come through these seams or spaces unless there was a good quantity of water in the bilge?

A. The water will not come through unless there was too much water in the bilges so that it would overflow.

Q. Well, you think it was the rolling of the ship that caused this water to swish and splash through?

A. That is my idea, when the ship was rolling and laboring [351] them kind of planks kind of work a little bit backwards and forwards and make cracks the water spurted through.

Q. Have you ever known any other instance of cargo being damaged by water in that way?

A. You mean in that ship at any time?

Q. Any ship you have ever been in. You would not say that was a common experience in carrying cargoes, would you?

A. No, it is not, it is not a common experience unless the ship is rolling and then it is apt to do that in the working of the ship.

Q. Well, do you remember any cases where the shippers sued for damages on account of a cargo being wet that way?

A. No, I never heard of anything before.

(Testimony of Max Gunther.)

Redirect Examination.

Q. (Mr. BOGLE.) You say that is not a common experience for water to blow through these cracks that work loose during heavy weather?

A. During heavy weather when the ship is rolling.

Q. Have you ever known a ship where that had happened before any other ship that you have been in?

A. I never experienced such heavy weather in any other ship.

Q. Have you ever had much experience with wooden ships?

A. I have been in quite a few of them.

Q. That is not a happening that you reasonably expect to occur, is it?

A. For the water to blow through?

Q. Yes, for rough enough weather so that water would blow through the side of the ship?

A. It will not unless the ship is rolling heavily from one [352] side to the other.

Q. It does not do that very often, does it?

A. It does in rough weather it rolls; when the ship rolls it does not always blow.

Q. Did you see any openings in the skin of the ship where it blew through—what do you call that, the skin?

A. The skin. Well, you see the seams where the planks are joined together there—

Q. Did you notice any cracks?

Q. (Judge HANFORD.) They call the planking on the inside of the ship, the skin of the ship?

(Testimony of Max Gunther.)

A. Yes, sir.

Q. (Mr. BOGLE.) Did you notice any cracks or openings in the skin of the ship prior to the time the salmon was loaded or during the course of the voyage?

A. No. I noticed the place where they are joined together. I did not notice any cracks. If there was I would not have left them there.

Q. Do you think that any of this damage was caused by reason of this plank working loose, any salmon was damaged by reason of that?

A. Why yes, when I came down there the water was washing from one side to the other.

Q. How far was that plank from the salmon?

A. Why the plank was cut loose right about a foot and a half from where the salmon was stowed.

Q. Was that plank the same size and the same construction as the balance of the construction of the ship? A. Yes, sir.

Q. Apparently the same age? [353]

A. Yes, sir.

Q. Do you think any of the salmon was damaged by water coming through the seams of the ship?

A. I am positive of it, I seen it when I came down there, I had rubber boots on and I saw the water splashing up against the salmon.

Q. Do you think there was any damage by water coming through the deck seams? A. Yes, sir.

Q. That water under the hatch, that damage could not have been caused by water coming through the skin of the ship? A. No.

(Testimony of Max Gunther.)

Q. Has the "Jeanie" made many voyages with salmon while you were aboard of her, during the entire time you were aboard of her, did she carry any other salmon shipments?

A. Yes, we carried shipments before and after that.

Q. Ever have any damage other than in this one shipment?     A. No.

Q. Did you carry any coal on the upbound voyage on any of these other trips that you remember?

A. Yes, I think we did.

Q. Now this coal which you said was loaded in the aft part in the between decks, at the time the Chil-koot salmon was taken aboard, how far was that from the place where the salmon was loaded?

A. In the aft hold or forward?

Q. I thought you said there was some coal in the aft between decks?

A. In the forward between decks in the aft part.

[354]

Q. In the aft part of the forward between decks?

A. Yes.

Q. How far was that from the salmon?

A. The whole length of the hatch is 16 feet, and it was about eight feet away from the aft part of the hatch. The whole length of the hatch is 16 feet and the salmon was on the fore part of the hatch, about 10 or 12 feet. Sixteen and ten is twenty-six—it must have been 32 or 34 feet away from the coal.

Q. Did you notice any of that coal-dust flying at the time you loaded the salmon?     A. No, sir.

(Testimony of Max Gunther.)

Q. At the time you put up the canvas to protect the salmon did you notice any coal-dust whatever on the salmon?     A. No, sir.

Q. What was the condition of the weather at the time this salmon was unloaded at Seattle, was it raining?

A. Well, I do not remember that exactly, whether it was raining during the time, it was January.

Q. You do not remember definitely?

A. No, I do not remember exactly.

Q. Was this salmon in apparently good condition at the time it was loaded in Alaska and delivered to the ship?

A. Well, as far as I could see it was outside of the boxes. Of course you may have wet salmon cans inside of the boxes and you will not be able to notice it outside.

Q. Was that salmon taken out of the warehouse up there?

A. Yes. Especially at Chomly, we were loading salmon at Chomly, and there was quite a bunch in the warehouse that was wet, and the only way we found it out a sailor dropped [355] *dropped* a box and it busted and when I looked at the cans I found it was damp on top and we opened quite a few boxes and we seen that they were all damp, and I told him, I said we will not take this package. He says the roof is leaking a little bit.

Q. You do not know the condition the cans were in in the other boxes?

A. No, we had taken quite a lot aboard then. The

(Testimony of Max Gunther.)

only way to see is to open them and we don't generally do that.

Q. You had already taken some aboard?

A. Yes, sir.

Q. Is there a certain amount of dampness in the hold of a wooden ship?

A. Well, the hold is supposed to be dry all the time.

Q. Is it perfectly dry?

A. It is perfectly dry unless the hatch is open and it rains in.

Q. Was it dry when you loaded this salmon aboard?     A. It was dry when we loaded it.

(Witness excused.)

Hearing adjourned. [356]

**[Testimony of F. O. Burckhardt, for Libelant  
(Recalled).]**

Seattle, February 16, 1915.

Present: Judge C. H. HANFORD, for the Libelant.

Mr. LAWRENCE BOGLE, for the  
Claimant.

**FURTHER TESTIMONY ON BEHALF OF THE  
LIBELANT.**

F. O. BURCKHARDT, recalled, testified on behalf of libelant as follows:

Q. (Judge HANFORD.) First, I want to call your attention to a statement of yours on page 8 of the record, when you were examined as a witness before, referring to the time when the goods were being reconditioned in the warehouse. According to the report you made this statement: "I made a number

(Testimony of F. O. Burckhardt.)

of trips to the warehouse when the salmon was being reconditioned, and saw them open cases that apparently were all right, when they got into them they found cans that were covered with coal-dust, and some of the cans would be wet." Do you want to make any explanation of that statement, if you do, you may make it now.

A. Well, I do not remember exactly what I testified to that day—

Q. What is the fact, as you remember it?

A. I do not remember at this time of any of the cans having been wet.

Q. You mean cans that were in dry cases?

A. Cans that were in cases that were dry the cans were dry, although there were a lot of them, a great many of them covered with coal-dust.

Q. These cans inside of dry cases had coal-dust?

[357] A. Yes, sir.

Q. What is the fact as to cases themselves being in the warehouse that had not been set out as damaged cases—any of these cases being wet?

A. Oh, there were a lot of cases in there in the warehouse that had not been set out originally, that we found were wet when we went through the pack later on.

Q. What do you know about any bills of lading having been issued or delivered to anybody, for this shipment of goods?

A. I never saw any bill of lading that was delivered to myself or any of the employees of the company.



(Testimony of F. O. Burckhardt.)

Q. Did you see any bill of lading in the hands of the consignee or the wharf or the warehouse people, or Mr. Swan, or anybody else?

A. I do not remember as to whether Mr. Swan had a bill of lading or whether I saw one in his possession or not.

Q. Well, how about seeing it anybody else's?

A. I do not remember seeing a bill of lading in anybody's possession.

Q. At the cannery, was there any bill of lading left or found there, to your knowledge?

A. No, sir.

Q. Did the watchman up there ever report to you anything about a bill of lading?

A. To my knowledge there was never, at any time, any shipment of salmon was there a bill of lading delivered to my watchman at Chilkoot.

Q. That is the cannery you had charge of?

A. Yes, sir. [358]

Q. Do you know Mr. Banbury, the purser of the "Jeanie," on that trip?     A. Yes, sir.

Q. Have you had any conversation with him about bills of lading for this shipment?

A. I had a conversation with Banbury in Juneau.

Q. Fix the time, as near as you can.

A. Some time during the month of November, 1914.

Q. Now, in that conversation, did Mr. Banbury tell you positively that he did not deliver any bill of lading to the watchman at the cannery?

A. He told me he was not sure as to whether or

(Testimony of F. O. Burckhardt.)

not bills of lading had been delivered to the watchman at Yes Bay or Chomly, but his impression was that they had not been so delivered; that as far as Chilkoot was concerned he was absolutely positive that no bill of lading had been delivered to the watchman, for the reason that he was under the impression that my watchman could neither read nor write—that is at Chilkoot. And, he stated furthermore, in that conversation, that his impression, his recollection was, that the bills of lading had all been delivered to Mr. Swan for delivery to us after arrival of the "Jeanie" at Seattle.

Cross-examination.

Q. (Mr. BOGLE.) Mr. Burckhardt, you testified formerly in this case, approximately one year ago, February 18, 1914, the record shows?

A. Yes, sir.

Q. Almost a year to a day. [359] A. Yes.

Q. Was your recollection of the facts any clearer at that time than they are now?

A. Were they any clearer?

Q. Yes, sir.

A. Oh, I could not say that they were any clearer, for the reason that this thing has been discussed so much since that time, that I do not think there is any difference, probably, as to my recollection.

Q. Now, the statement which Judge Hanford just read to you was made by you in direct answer to the question asked by Judge Hanford, the statement he has just read to you, page 8 of the record, and now

(Testimony of F. O. Burekhardt.)

you say that statement was not correct, as I understand you?

A. Well, I don't know—I did not mean to say that that is not correct transcription of what I said at the time, but what I meant was that there were a lot of these cases that were in the warehouse that had been passed as being O. K. and dry, that were not dry. The cases were wet and the cans were wet. I do not remember having made this particular statement, and I do not remember of having seen at the time that I made these various investigations any wet cans in dry boxes.

Q. You do not remember that now?      A. No, sir.

Q. These cases that you found in the warehouse to be wet did any of these cases have any coal-dust?

A. Coal-dust in the case?

Q. Yes, in the wet cases in the warehouse.

A. You mean were there some of them—[360]

Q. Yes, in any of the wet cases. You say there was a certain amount. Some two thousand cases were segregated and stacked on the dock as damaged cases.      A. Originally, yes.

Q. Now, you testify that after you went into the warehouse and made a further inspection, that you found some wet cases in the warehouse?

A. Yes, sir.

Q. Do you remember, approximately, how many wet cases you took out of the shipment in the warehouse?      A. No, I do not remember.

Q. Approximately, how many?

A. Well, I don't know. I do not believe I ever

(Testimony of F. O. Burckhardt.)

kept tab on that or tried to keep a record of it.

Q. There were some 27,000 cases in the warehouse, probably a little more, was there not?

A. On the original shipment? That is the amount of the original shipment.

Q. The original shipment was something over 29,000 cases. Two thousand cases were segregated and placed on the dock.

A. Well, those were sent over in the warehouse also for overhauling; they were not overhauled on the dock, they were all in the warehouse.

Q. I understand that, but they were segregated as being damaged cases on account of their wet condition? A. Originally, yes.

Q. And that left about 27,000 cases, a little over, in the balance of the shipment?

A. Whatever the difference would be.

Q. Between 27,000 and 29,000. Now, what proportion of [361] these 27,000 cases which were passed over into the warehouse originally as being in perfect condition, did you afterwards find were wet?

A. Oh, I could not tell you that without looking at the records. I would not be able to give you an intelligent answer to that.

Q. Well, Mr. Burekhardt, have you any record that would show that? I would like very much to get an answer to that.

A. How many cases there were that were wet?

Q. Of the 27,000 that were passed over to the warehouse originally as being all right.

(Testimony of F. O. Burckhardt.)

A. I do not know whether we have a record of that. I think you could get a statement probably a whole lot better from Horner who overhauled that cargo, than you could from me. Horner was on the job all the time and I only went down occasionally.

Q. So that the wet cases which you picked out were only a few, comparatively a few, were they?

A. Well, I did not pick them out. You misunderstand me. I did not say that I picked them out; but he would call on us every once in a while to come down and take a look at the condition of the packages down there.

Q. Mr. Horner would?      A. Yes.

Q. And you would go down?

A. And we would go down and make an inspection with them. But if you have got 27,000 cases of salmon piled up in a warehouse, piled to the rafters, you will readily understand it is not possible for you to go through and pick out of these 27,000 cases all of the wet cases [362] yourself.

Q. No, I do not mean that you did the actual work, but of the 27,000, could you give some proportion of the amount which you yourself saw were wet? Were one-half of them wet?

A. Well, I could not tell you that. I could not see anything that was exposed to view.

Q. I do not think you quite get what I mean.

A. We would see those cases all piled up in a row and we would break down a row and then we would get an idea by looking them over what was wet. And we would find piled among these dry cases a

(Testimony of F. O. Burekhardt.)

certain amount of wet cases. What that percentage of wet cases was I do not know. I do not want to give any guess, because if I did it would not be anything but a guess, without any great degree of accuracy.

Q. I wanted to get, if you had some idea, how many wet cases you saw, that is approximately, I do not mean down to an exact number.

A. I could not tell you that approximately. I do not know how many wet cases. I know there were a lot of wet cases in there, scattered through the pack, here and there you would find wet cases.

Q. What proportion of the shipment you inspected, fifty per cent of them wet?

A. Fifty per cent of them?

Q. Or was it larger or smaller percentage?

A. Oh, I don't know. I would say along about—well, I could not answer that question, whether fifty per cent or whether more or less. [363]

Q. Was it somewhere in that neighborhood?

A. I know there were a lot that were wet; what the percentage was I do not know.

Q. Would you say there were twenty-five per cent?

A. I say I do not want to make a guess at it.

Q. You do not remember. You just remember you saw some wet cases?

A. I saw a lot of wet cases there.

Q. You do not know how many. Now of the dry cases. You do not know how many dry cases?

A. If I know how many wet cases there were I

(Testimony of F. O. Burckhardt.)

could tell you how many dry.

Q. That would follow. Of the dry cases do you remember what percentage showed damage by coal-dust?

A. There you are getting back to that percentage again, that I cannot answer.

Q. That is a very important point in this case, Mr. Burckhardt.

A. I think you would probably get a better idea of how many there actually were from the man that overhauled them than from a man who went down occasionally for an examination and spent perhaps a half hour or hour looking over that part of the pack that happened to be exposed at that particular time.

Q. When did you first obtain knowledge of the fact that there were some wet cases in the warehouse, which had been passed originally as being good cases?

A. It was not long afterwards. I do not remember just how soon after the cargo had been discharged.

Q. Within the week?

A. Oh, I think it was within a week of the time they had been [364] discharged.

Q. You got your knowledge from Horner or some of his assistants?

A. As I remember it came from Horner or the warehouse man.

Q. Mr. Burckhardt, these cases which were wet,

(Testimony of F. O. Burckhardt.)

were you present when any of these cases were opened up?

A. When they were opened up in the warehouse?

Q. Yes. A. Yes.

Q. In what way did the wetting of the cases damage the contents? A. Damage the contents?

Q. The contents of the cases, cans, labels, etc.?

A. The water and the coal-dust had run down the side of the label.

Q. Was there coal-dust in all of the wet cases?

A. Why, I think practically in all the cases, these wet cases, there was coal-dust, as I remember.

Q. Of course you did not inspect all of the wet cases by any means? A. Oh, no, no, sir.

Q. Was there any damage to the dry cases which were opened up particularly the damage caused by coal-dust? I understand you testified to damage to some of the dry cases?

A. Oh, there were cases that were dry, and cases that had been wet and dried out in the warehouse, I imagine they had dried out in the warehouse, and the labels would be covered with coal-dust, and the top of the cans would show coal-dust.

Q. Would the tops and bottoms of the cans show any other [365] damage beside coal-dust?

A. I do not think the bottoms of the cans. The bottoms of the cans were all right, as I remember; it was on the tops and on the sides.

Q. Well, what damage would there be to the top beside the coal-dust?



(Testimony of F. O. Burckhardt.)

A. Oh, there would be a lot of places where rust had started.

Q. Any other damage to the tops besides rust?

A. Beside rust? No, that was the only damage I can recollect at this time, the principal damage.

Q. What kind of tops were you using?

A. How do you mean, what kind of tops.

Q. What kind of tops? A. Tin tops.

Q. Any particular kind?

A. Particular kind of tin?

Q. Were you using the same kind of tops you are using now? A. Yes, sir.

Q. You are sure of that? A. Sanitary tops.

Q. Is it not a fact that you were using a particular kind of top and bottom that season, which you are not using now?

A. No, we are using the same weight top and bottom that we are using now.

Q. That was made out of the same tin?

A. Same kind of tin, same weight of tin.

Q. Was it lacquered or varnished in any way before being used?

A. These tins that we used that year, that was 1912, they were enameled tins. [366]

Q. You are not using these ends this season?

A. Enameled?

Q. Yes, sir.

A. No, we are using plain and black end.

Q. Did you ever use these enameled ends any season before or after the season of 1912?

A. Yes. I used enameled ends in 1912, and used

(Testimony of F. O. Burckhardt.)

enameled ends in 1913 and 1914.

Q. You used these last season, did you?

A. Yes, sir.

Q. Through your entire pack?

A. No, sir; partially.

Q. Is it or is it not a fact that you merely used in 1913 and 1914 what you had left over from 1912?

A. Oh, yes.

Q. You did not buy any more of these enameled ends? A. No.

Q. Why did you stop using these, Mr. Burckhardt?

A. I will tell you. We used enameled ends in 1912 because we cut out the lacquering; we were putting out a tin can without and lacquering or enamel outside of the ends. We bought our ends from the American Can Company. As a matter of fact, we have always bought our ends from the American Can Company since we have been in the sanitary business. Our contract with the American Can Company provides we must buy our tops and bottoms from them. And we bought the enameled ends because we thought that that was cheaper to buy enameled ends and do away with the lacquering in the cannery, and get rid of the danger of fire. A lacquered can is better can—an enameled can [367] is a better can than a lacquered can, I mean.

Q. You used it because you thought it would be cheaper, didn't you? That was in 1912.

A. And it was impossible for us to lacquer only the ends and not the rest of the can.

Q. Is that the reason you stopped using them?

(Testimony of F. O. Burckhardt.)

A. Well, there were several reasons why we stopped using them. We afterwards found it was cheaper, figuring up the cost of these ends, we found it was cheaper to lacquer our own ends, and we went back to lacquering. But, as I said before, the lacquered ends are not as good as the enameled ends.

Q. Is that the only reason you stopped using them, because you found out it was more expensive?

A. That is the only reason I know of. We had our crews up there, and in the regular course it did not cost any more to do our own lacquering, no additional expense to us. There was no rebate on our Chinese contract.

Q. Is it or is it not a fact, Mr. Burckhardt, that these enameled ends will not stand a very strong lye bath or wash?

A. They will stand just as much lye or wash as anything else that can be put on the can. We never had any trouble from that source whatever.

Q. Were you able, at the cannery, during the season of 1912, to wash and clean your cans so as to get all kinds of refuse and grease and matter off the enameled ends, without in any way injuring the enamel? A. Yes, we had no trouble.

Q. You did not have any trouble that way at all?

A. No, sir. [368]

Q. Is it not a fact that in shipments of that year you had a great deal of trouble because of a sort of mildew from the mineral matter which stuck to these ends? A. No, sir.

Q. So that it had to be cleaned off down here?

(Testimony of F. O. Burckhardt.)

A. No, sir; that is not a fact.

Q. Is it a fact, that at least some portion, if not a considerable portion of the work done by Horner, was cleaning this enamel and mineral matter from these enameled ends? A. No, sir; it is not.

Q. That did not enter into the bill at all?

A. No, sir.

Q. You are sure of that?

A. Not anything that resulted from any damage that could possibly have been caused by the fact that we were using an enameled end, or by damage that could have been caused to the cans before they were loaded aboard the "Jeanie."

Q. And none of the damage was caused by reason of any grease or mineral matter sticking to these enameled tops and bottoms?

A. No, sir. I never run across anything of that sort in any of my examinations.

Q. There was none of this cleaning or overhauling or reconditioning of Horner's in connection with cleaning these enameled ends?

A. Cleaning the enameled ends?

Q. Yes.

A. Caused by what?

Q. By any matter sticking to them outside of coal-dust? A. No. [369] A. No.

Q. There was no mildew or any deterioration which in any way injured these enameled ends, caused by anything? A. No.

Q. Nothing at all? A. No.

Q. Never had any trouble with these enameled

(Testimony of F. O. Burckhardt.)

ends outside of this instance?

A. No, we have used them since.

Q. What you had left over?

A. Yes. I would rather use to-day the enameled end than any other end that I have ever seen. That is the best end that the canneryman can use.

Q. It will stand just as strong a wash at the cannery in cleaning it as the lacquered can?

A. Yes, sir.

Q. You can clean it just as thoroughly at the cannery as the lacquered can?      A. Yes, sir.

Q. Without any injury?      A. Yes, sir.

Q. Of course, you do not know whether Mr. Banbury delivered bills of lading to your watchman at the cannery or not, do you, of your own personal knowledge?

A. I do to this extent, that the watchman delivers to me upon my arrival in the spring, all the papers pertaining to the business that he may have in his possession.

Q. At the Chilkoot cannery?

A. At the Chilkoot cannery. And I know he is a very careful man. And I know, furthermore, that at no time has he [370] delivered to me upon my arrival at my cannery, or sent to me either at Seattle or Portland, any bills of lading for any salmon that was shipped out of there.

Q. You are a stockholder in the libelant company and one of the officers?      A. Yes, sir.

Q. What was the occasion of this conversation you had with Banbury? How did it happen to occur?

(Testimony of F. O. Burckhardt.)

Had any question been raised about these bills of lading?

A. I do not remember exactly how we did come on to the proposition of the bills of lading, but I was discussing with him this transaction, and in the course of our conversation I did ask him about the bills of lading.

Q. Were you discussing with him the manner in which the cargo was damaged, was that the subject of your conversation?

A. Well, I think we had a general discussion of the various things in connection with this loss, and among other things we discussed these bills of lading.

Q. Have you known Mr. Banbury very long?

A. Oh, I have known Mr. Banbury since, I think, the first time he came into the cannery was 1911.

Q. Mr. Banbury testified under oath that he delivered a copy of each of these bills of lading to the watchman at the cannery.

A. So I understand.

Q. He further testified that he never told you that there were no copies left at the different canneries.

A. Evidently one of us is not telling the truth.

Q. Evidently one of you is mistaken. But I was just repeating his testimony under oath; I do not mean to say you are not [371] telling the truth.

A. I have read his testimony also. It would look as though one of us was lying.

Q. That was just a casual conversation with him there, was it?

(Testimony of F. O. Burckhardt.)

A. I do not know whether it was a casual conversation. Banbury and I had dinner together. I was in Juneau for about a week attending court and Banbury was stopping at the same hotel where I was, and this conversation took place one evening at dinner.

Q. I suppose you discussed the conditions of the weather encountered on that voyage, and all these various matters, didn't you?

A. Well, he did not remember very much about the weather.

Q. You asked him about that, did you?

A. Yes. He said he did not remember very much about the weather.

Q. Were you going into this matter with the idea of using Banbury as a witness?

A. No, I had no particular idea of using him as a witness?

Q. Mr. Burckhardt, were you at the warehouse or at the dock, the Virginia Street Dock and Warehouse Company, during the time these salmon were being unloaded from the "Jeanie"? A. Yes.

Q. There all the time?

A. Oh, no; not all the time.

Q. You do not remember how many damaged cases were put in that pile on the dock, where they segregated it, do you? A. No, I do not.

Q. That was all there at the time you had this meeting there that day, was it not? They were not counted then? [372]

A. When we had that meeting I think they were still putting cases in there.

(Testimony of F. O. Burckhardt.)

Q. The pile was not complete?

A. As I remember now I do not think the pile had been completed. A lot evidently had gone on through into the warehouse, and some of it had been loaded into the cars.

Q. Did Mr. Swan ever deliver these copies of the bills of lading to you after the ship arrived?

A. On this shipment?

Q. Yes. A. Not to me.

Q. Did he deliver them to your company?

A. I do not know whether he did or not.

Q. You testify to the best of your knowledge that no officer or employee of the company have ever received these bills of lading?

A. Yes, sir; to the best of my knowledge.

Q. What position do you hold with this company?

A. Vice-president.

Q. If they had been delivered to your company they probably would be in the records, and you would know about it, the records of your company?

A. Well, I could find out by making an examination.

Q. You never made that examination to see?

A. Well, I will tell you, this part of the work, that has not been my work particularly; these matters have been handled by my brother and not by me; and, as far as the matter of records are concerned he would be in a better position to testify on that than I would be.

Q. But coming into court here and testifying to the best of [373] your recollection that no employee



(Testimony of F. O. Burckhardt.)

or officer of the company had received bills of lading, you would naturally have made some investigation to find out whether there was some in their possession before coming to testify?

A. If I had known that this question was going to be brought up, why I would have made a more careful examination.

Q. Did you know that Judge Hanford was going to ask you about these bills of lading?

A. I did not.

Q. You never made search to see whether they were in the records of the company? A. No.

Q. And you do not know whether the company has these bills of lading?

A. I do not; that is not in my department.

Q. Is this the first shipment you ever made upon the "Jeanie"?

A. No, we made other shipments by the "Jeanie."

Q. Did you ever receive bills of lading in those cases?

A. I do not remember ever having seen any.

Q. Did you ever receive any bills of lading for any shipment made by you from any vessel operated by Swan?

A. I will tell you that I do not remember having seen any; and at the same time I want to say again that that part of it is not my work.

Q. I am just asking about these, Mr. Burckhardt.

A. But as far as I am personally concerned, and as far as the documents are concerned, they are supposed to go into the watchman's hands in the can-

(Testimony of F. O. Burckhardt.)

nery, and then come to me; neither one of us ever had any bills of lading.

Q. Of course, the watchman up there took no receipt whatever [374] for these salmon that went aboard the "Jeanie"? A. No.

Q. So he really did not know how many cases went aboard, as far as any receipt or record he may have from the steamship is concerned?

A. He usually writes me how many cases have gone, and the brands.

Q. That is his own record?

A. Yes. He writes to me. I get a letter from him any time he ships anything; I send him a letter or my brother will send him a letter telling him what is to go out at a certain time, and what brands.

Q. I mean he does not get any receipt from the steamship when she takes it?

A. As far as I know, he has never had any receipt from the steamship for any salmon shipped out of Chilkoot during the time he has been with me.

Q. Did you have anything to do with the sale of these salmon for your company? A. No, sir.

Q. Who has charge of that? A. My brother.

Q. He is here and is going to testify? A. Yes.

Q. You do not know what the company lost on this shipment, do you?

A. No, that belongs to his department.

(Witness excused.) [375]

[**Testimony of C. A. Burckhardt, for Libelant  
(Recalled).**]

C. A. BURCKHARDT, recalled on behalf of the libelant, testified as follows:

Q. (Judge HANFORD.) In giving your testimony in this case on a former occasion, Mr. Burckhardt, you stated as a fact or as a matter of understanding on your part, that bills of lading for this shipment got into the hands of the warehouse people or wharfinger or dock company. I wish you would state more fully all that you know about any bills of lading for this shipment. If you have any positive information, state what it is.

A. As far as this shipment is concerned, we have no records of any bills of lading having been delivered to us. I take it for granted that the bills of lading were delivered to the warehouse, not through any direct knowledge except their custom. I always understood they were delivered there or to Kelley-Clark Company; and we received none at the office and there are none on file in our office now, nor has there ever been any.

Q. What if any reports were ever made to you by the watchmen at the canneries in regard to bills of lading delivered for these shipments that year?

A. I do not catch that.

Q. I want to know if the watchman up there ever reported to you anything about whether they received or did receive any bills of lading?

A. These watchmen very seldom ever receive any bills of lading. There are men there, as my brother

(Testimony of C. A. Burckhardt.)

explained, that we generally write to or send them instructions by the boat that is going in, to deliver to this boat so many cases of salmon of the various brands. Most of the men there are [376] rather illiterate and would not understand what a bill of lading was, or would not be able to read them, part of them, and the watchman at Chomly that year could not either read or write.

Q. You were in charge of the cannery at Yes Bay?

A. Yes, sir.

Q. Now, if the watchman at Yes Bay had received bills of lading, what would he do with them, in the course of business?

A. He would keep them there; put them on a file and keep them there.

Q. And be there when you got back the next season?

A. Yes, be there when I got there in the spring.

Q. Did you observe or notice any such bills of lading being there?     A. No.

Q. Merely to direct your attention to the date, I will ask you to look at that letter. Do you remember writing that letter?     A. Yes, sir.

Q. This letter is dated November 27th, 1914. Where were you at that time?     A. Portland.

Q. Your company has an office there?     A. Yes.

Q. About the time of the date of that letter, did you have occasion to make an examination of the papers on file and the records of your company?

A. Yes, sir.

Q. Did you find among these papers or records

(Testimony of C. A. Burckhardt.)

any bills of [377] lading, or reference to bills of lading referring to these shipments? A. No.

Q. Look at the paper I now show you and see if you identify it? A. Yes, sir.

Q. Do you know the signature on that paper?

A. Yes, sir.

Q. By whom was it signed?

A. Signed by Mr. Wiley of the Alaska Coast Company, witnessed by Mr. Swan. Signed by myself for the Alaska Pacific Fisheries, and witnessed by Mr. Claghorn.

Q. Do you know when that paper was signed, with reference to the date it bears?

A. I do not remember the date of it. It was signed at the time—I will tell you the circumstances how that paper came to be signed. At the time the salmon arrived in that damaged condition, the insurance people and the representatives of the steamship company, my brother and myself, went up to the wharf in reference to this damaged cargo, to see whether the matter could be adjusted. And it was at that time that Mr. Horner was selected to overhaul the entire cargo and put it in as good condition as when it left the cannery. It was our understanding that this was to be done by the insurance company, at their expense.

Mr. BOGLE.—I object to that. I would rather he would tell what took place, and the Court can draw its own conclusion from that.

A. I am leading up to that. When Mr. Horner presented his [378] bill the insurance people re-

(Testimony of C. A. Burckhardt.)

fused to pay that bill, and we were going to libel the "Jeanie" for that bill—

Q. (Mr. BOGLE.) When was that?

A. Well, it was a few days prior to this.

Q. (Judge HANFORD.) With reference to the bill—you paid Horner's bill?

A. Oh, yes. We presented our bill immediately, and were trying to make a compromise and settle this thing without a lawsuit. Finally we saw we could not, and we were going to libel the boat, and they gave us this contract so that we would not libel it, hoping in the meantime that we might adjust it.

Q. Now, was that paper signed and delivered to you about the time of that transaction when you paid Horner's bill? A. Yes, sir.

Judge HANFORD.—I offer this paper identified by the witness in evidence.

Paper marked Libelant's Exhibit "B", filed and returned herewith.

Cross-examination.

Q. (Mr. BOGLE.) Who drew this agreement that has been offered in evidence as exhibit "B"?

A. The Alaska Coast Company, I guess.

Q. They drew it and presented it to you, did they?

A. I think so.

Q. How did they happen to draw that? How did it come about that they drew that?

A. We were going to libel the "Jeanie."

Q. Had you at that time paid Mr. Horner's bill?

[379] A. Yes, sir.

Q. You had paid Horner's bill before that docu-

(Testimony of C. A. Burckhardt.)

ment was drawn, had you?

A. Yes, sir, I am satisfied I did, as near as I can recollect at this time.

Q. Mr. Horner's bill was paid by you when it was presented, was it?

A. Mr. Horner first presented the bill to the insurance company.

Q. They are not parties to this suit?

A. No. They are the fellows that are fighting this suit.

Q. They are not parties to this suit?

A. I do not know as to that.

Q. That bill was presented—

A. To Mr. Swan is the man that the bill was presented to, and then the insurance people came to see us, Mr. Foreman and this man West.

Q. And they declined to pay it, did they?

A. Yes, they declined to pay it in full; they wanted to compromise it.

Q. Now, you paid that bill in full, did you?

A. As near as I remember.

Q. Did you pay it all at one time, the entire bill?

A. I could not say as to that.

Q. Just stop and think a minute and see if you can recollect whether you paid that bill in full at one time.

A. No, I could not tell you. I do not know. The only way I could—I could very readily look the matter up in our records. I do not know whether I paid all at one time or in five or six times. [380]

Q. Is it not a fact that the entire bill is not paid

(Testimony of C. A. Burckhardt.)

to-day? A. I think it is.

Q. Referring to this bill of Mr. Horner, which is in evidence, and to the last item on the bill—

A. It is receipted, is it not?

Q. It is receipted as paid. Has the last item on that bill amounting to \$280 been paid?

A. I think it has.

Q. Is it not a fact that the Virginia Street Warehouse & Dock Company are still trying to collect that from you, Mr. Burckhardt?

A. I do not think so. If it has not been paid, we have got to pay it.

Q. You pay the bills of the company, don't you?

A. I sign the checks.

Q. You do not know whether you paid that or not?

A. I pay a good many bills during the year.

Q. I know, but you are bringing suit and alleging that you have made entire payment, in fact you allege that at the time the original libel was filed. Now, is it not a fact that that last item has never been paid?

A. I would have to find out from our cashier; that is the only way I could tell you; I would have to look over the records and get a statement from him.

Q. Could you do that? We have information to the effect that it has not been paid. You heard your brother's testimony with reference to the enameled ends used in 1912? A. Yes, sir.

Q. What do you say with reference to these ends, Mr. Burckhardt? [381]

A. Well, we tried enameled ends that year.



(Testimony of C. A. Burekhardt.)

Q. I mean as to any of the damage to this salmon being caused in any way by the enameled matter or grease sticking to these ends, causing a sort of mildew?

A. No, we have had no complaint; we paid no claims.

Q. You inspected the shipment when it arrived here. Did you see such damage?

A. No, sir, nothing unusual; I saw nothing unusual.

Q. You do not know whether Horner as part of his labor washed all these cans, not all of them, but a large portion of them, the enameled tops and bottoms, so as to remove mildew and grease?

A. No, I never heard of it.

Q. Particles of *sich*, etc., sticking to them?

A. No.

Q. You do not know anything about that?

A. No. We generally put the fish in the can.

IT IS STIPULATED that Mr. Small, of Kelley-Clark Company, and Mr. Hall, of the Virginia Street Dock & Warehouse Company, would testify, if called, that the original bills of lading in this case, neither the original nor copies of the bills of lading in this case, have been delivered to them or were ever in their possession.

Q. You would not be able to give us any accurate information as to the number of cases in this shipment which showed some damage by being wet?

[382] A. No.

Q. Nor the part or protection that were damaged

(Testimony of C. A. Burekhardt.)

by having coal-dust in them?

A. When these people asked me if I was satisfied to have Horner overhaul the matter and have Horner put them in as good condition as when they left the cannery, I accepted that and so I did not bother about details at all.

Q. Now, when coal-dust gets into a shipment without any water, the only labor necessary is to wipe off with a dry rag, is it not?

A. To wipe off the coal-dust?

Q. Yes, with a dry rag.

A. Yes, that is all, and probably the labels might be soiled by the dust and have to replace them.

Q. That would not occur in very many cases?

A. This coal-dust would smear things up pretty bad.

Q. Yes, if rubbed.

A. They would rub in there together; the cans have a little play in there, and if the coal-dust got in there.

Q. Did you notice such damage in there?

A. Yes, the dry cans were soiled. But as far as the coal-dust on the tins was concerned, you could rub that off with a dry rag, or a wet rag any way.

Q. Mr. Burekhardt, this entire shipment has now, at this time, all been disposed of, has it not?

A. Well, I could not tell you as to that.

Q. Can you testify at this time, Mr. Burekhardt, that you have suffered any damage whatever by reason of the delay or the time consumed in reconditioning this shipment; that you lost any market or that

(Testimony of C. A. Burckhardt.)

you lost any sale? [383]

Judge HANFORD.—I object to the question, because it is irrelevant and outside of the scope of the examination in chief, and the matter has been fully covered by testimony heretofore taken.

Mr. BOGLE.—I will call Mr. Burckhardt as my own witness for this purpose, as the Judge objects to the last question.

Q. (Mr. BOGLE.) You have verified an amended libel in this case, dated February 15, 1915. This is your signature, is it not?

A. Yes, sir.

Q. Have you read this amended libel?

A. Yes, sir.

Q. Referring to paragraph X of this libel, Mr. Burckhardt, can you testify that you sustained a loss of \$7935 by reason of the cargo being reconditioned?

A. I made a statement upon this thing, but I haven't got it with me.

Q. Can you testify that you lost that amount of money, for the reasons stated in that paragraph, which you have just read?

A. Well, I have made up a statement of that and I gave it to Judge Hanford; I haven't it with me.

Judge HANFORD.—That is in the testimony you gave before.

Q. You know that you lost that amount of money?

A. I made a statement of what our losses were, and I haven't that statement with me; I think I gave it to the Judge. I have every reason to believe that these are the amounts.

(Testimony of C. A. Burekhardt.)

Q. This paragraph alleges that between the dates when this salmon arrived here, approximately January 10th, 1913, [384] and the date when the cargo was entirely reconditioned, that the market price declined, so that this shipment was worth some \$7,900 less? A. Yes.

Q. And that you suffered a loss thereby in the sum of \$7,900. A. Yes, on account of that decline.

Q. Do you swear that is correct, that you suffered that loss?

Judge HANFORD.—I object to the question. I expect the Judge to say that as a matter of law.

Mr. BOGLE.—I think you are libeling us for actual damages sustained, not theoretical damages.

Judge HANFORD.—That is actual damage.

Q. I ask you if you actually sustained that damage of \$7,935.40. Did you, Mr. Burekhardt?

A. As I stated to you before, the only way I could answer that question, is as I have answered before. I made up a statement of our losses and gave that to the judge and I haven't a copy of it with me.

Q. Don't you know, as a matter of fact, Mr. Burekhardt, that you had a large amount of salmon of the same brand and the same label in the warehouse at this time? A. Yes.

Q. That you were unable to dispose of?

A. Yes.

Q. Well, how could you suffer this loss?

A. The market declined between the time of the arrival of that salmon and before we were able to market it.

(Testimony of C. A. Burckhardt.)

Q. But at the time the market declined you had an equal amount of salmon in the warehouse which you were unable to dispose of. In what way did you sustain a loss? [385]

A. Had not the market declined?

Q. That did not mean a loss to you if you did not sell the salmon.

A. I do not know that we have to prove that.

Q. You certainly have to prove that you actually lost it.

A. We did not lose an actual sale.

Q. You did not lose any actual sale?

A. I can answer it that way.

Q. This is merely the difference in the market price? A. Yes, sir.

Q. And you did not lose any sale of the salmon, and you had no opportunity to sell it during that time? A. I do not think we did.

Q. Now, referring to paragraph XI, the interest on that amount. A. Yes.

Q. The same applies to that, if you had no actual sale for it, you had to hold it anyway, didn't you?

A. Yes, sir.

Q. And the same would apply to paragraph XII, would it not, storage? A. Yes, sir.

Q. And also for insurance? A. Yes, sir.

Cross-examination.

Q. (Judge HANFORD.) When you were summoned as a witness in this case on a previous occasion, had you recently then investigated the market conditions of canned salmon, at the time these goods

(Testimony of C. A. Burekhardt.)

were being reconditioned? [386] A. I had.

Q. Was your testimony given on that occasion in accordance with what you then knew to be the facts in regard to the market price of goods of the same quality and brand of these, on the different dates, that is the date of arrival in January and the date when the goods were put in a marketable condition in March? A. Yes, sir.

Q. Did you make a computation of the difference, that is the total market value of the whole shipment less in March than it was in January?

A. Yes, sir.

Q. Are these figures stated in your amended libel of that difference in accordance with your recollection of what you found to be the case?

A. Yes, sir, as near as I can remember now.

Q. (Mr. BOGLE.) You did not actually suffer that loss, Mr. Burekhardt?

Judge HANFORD.—I object to the question as a repetition and calling for a legal conclusion.

A. As I stated before I do not think we suffered any loss.

Q. (Judge HANFORD.) I will ask another question now. Do you mean to testify that there was no opportunity to sell salmon at that time, or that you actually missed no opportunity to sell salmon because there was no purchaser, or that you were able to fill orders out of other salmon?

A. Yes, sir.

Q. That is the case. [387] A. Yes, sir.

Q. You kept on selling, there was market?

(Testimony of C. A. Burckhardt.)

A. Yes.

Q. And instead of selling these goods you sold other goods that you had in stock? A. Yes, sir.

Q. (Mr. BOGLE.) Is it not a fact, Mr. Burckhardt, that you actually sold some of these goods during that period, orders for which you had taken before the goods arrived, intending to sell them different goods you had in stock, and that you filled the order with these goods because they had been reconditioned and were in first-class order?

A. No, I do not think that is true.

Q. If Small of Kelley-Clark so testified, that is a fact, is it not?

A. Yes, Mr. Small would know.

Q. Mr. Small, as a matter of fact, handles your entire shipment?

A. Kelley-Clark. These goods were ordered out; this shipment of goods was ordered out from the cannery to cover sales.

Q. Actual sales which you had?

A. Yes. Otherwise we would not have brought down the cargo, because we could have kept the cargo at the salmon cannery without any storage charges.

Q. Is not that a sale which you hoped to get but which you did not receive?

A. No, some of these goods were sold. I cannot tell you how many, offhand. Some were sold, otherwise the goods [388] would not have been ordered out. I will not say they were all sold; I know they were not all sold, but there were other goods arrived afterwards, that were brought down.

(Testimony of C. A. Burekhardt.)

Q. In answer to the Judge's question, you said these goods, or part of them, that you filled orders out of salmon which you had already in the warehouse? A. Yes.

Q. That was salmon that arrived previously?

A. Yes, I answered that question. Let me explain. If we had not had any other salmon we would have lost sales of salmon.

Q. Mr. Small's testimony would be more accurate than yours on that? A. Well, it ought to be.

Q. And does it not seem unreasonable to you that you would have sales for salmon which was in Alaska, and instead of selling salmon which you already had in the warehouse here, the same brand—why would you sell salmon in Alaska when you had an equal amount in the warehouse of the same brand?

A. Well, that is a pretty hard thing for me to explain to you. But these things arise very often, that we still have brands of salmon here and order out more salmon, and the salmon that is in the warehouse probably would stay here and the new salmon would move on out.

Q. Why would that be?

A. Well, the other salmon was over in the warehouse, stored there, and the other stuff on the dock they would simply fire it on out, saving a transfer charge for one thing, taking it over into the warehouse and back again on the [389] Virginia street dock. There is the fish on the dock and they take them.

Q. It would be cheaper to put the steamer to the



(Testimony of C. A. Burckhardt.)

dock than to forward from the warehouse?

A. No, I did not say that. I say that the salmon arrive here, and no doubt they would ship the salmon on the dock in preference to the salmon that has been in the warehouse.

Q. You testified that this salmon that arrived, a large portion of it was sold, and that is the reason you ordered it down?

A. That is my understanding, my recollection of it. There was a part of that salmon, I cannot tell you what percentage of it was sold, but it is my recollection at this time that that salmon was ordered out on account of orders from Kelley-Clark Company that they needed these brands.

Q. And that you had a large amount of the same brand in the warehouse?     A. That might all be.

Q. Unsold?     A. That might be.

Q. For which you had no sale?

A. As I said before their testimony would be clearer than mine.

Q. We want to be perfectly fair here, Mr. Burckhardt. Is it not a fact that in making up this computation that you have just taken the amount of salmon, and you figured up the market value of it the day it arrived and you then figured up the market value the date when the reconditioning was entirely completed, and that you put that [390] sum in irrespective of any sale or prospective sale?

A. Well, I would say that we did.

Q. (Judge HANFORD.) Have you been advised by your counsel that that is the legal measure of dam-

(Testimony of C. A. Burckhardt.)

ages, and that you are entitled to recover that under the law? A. Yes, sir.

Q. (Mr. BOGLE.) So that the question of sale or possible sale or purchase of this salmon did not enter into it at all? A. No, sir.

(Witness excused.)

Hearing adjourned. [391]

United States of America,  
Western District of Washington,  
Seattle, Washington,—ss.

I, A. C. Bowman, a Commissioner of the United States District Court for the Western District of Washington, residing at Seattle, in said District, do hereby certify that

The foregoing transcript, from page 1 to page 333, both inclusive, together with the exhibits returned herewith, contains all of the testimony offered before me under the order of reference herein.

The several witnesses, before examination, were duly sworn to testify the truth, the whole truth and nothing but the truth. The testimony, on the dates therein indicated, was reduced to writing in shorthand by myself, or under my direction, and thereafter typewritten. And I certify that the testimony contained in said transcript is the testimony given by the witnesses at said times.

Proctors for the parties stipulated that the testimony when transcribed and certified by me should have the same force and effect as if read and signed by the witnesses.

The several exhibits mentioned in the testimony

and shown by the index, are returned herewith.

I further certify that I am not of counsel nor in any way interested in the result of this suit.

Witness my hand and official seal this 13th day of March, 1915.

[Seal]

A. C. BOWMAN,  
U. S. Commissioner. [392]

### COMMISSIONERS' TAXABLE COSTS.

Libelant:

Hearings February 18, 19, 1914, Feb.	
16, 1915 .....	\$ 9.00
Administering oaths to 7 witnesses....	.70
Marking and filing 2 exhibits.....	.20 Pd.
Transcript above hearings, 600 folios	
at 10c .....	60.00
	<hr/>
	\$69.90

Claimant:

Hearings, June 30, July 1, Nov. 13,	
1914 .....	9.00
Administering oaths to 5 witnesses...	.50
Marking and filing 7 exhibits.....	.70 Pd.
Transcript above hearings 367 folios	
at 10c .....	36.70
	<hr/>
	\$46.90

[Indorsed]: Testimony. Filed in the U. S. District *District* Court, Western Dist. of Washington, Northern Division. Mar. 22, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [393]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

S. S. "JEANNIE," Her Tackle, Apparel, Furni-  
ture, etc.,

Respondent.

ALASKA COAST COMPANY, a Corporation,  
Claimant.

**Order to Transmit Original Exhibits [to Appellate  
Court.]**

Now, on this 31st day of August, 1915, upon motion of Messrs. Bogle, Graves, Merritt & Bogle, and for sufficient cause appearing, it is ordered that the Libelant's Exhibits "A" and "B" and Claimant's Exhibits 1, 2, 3, 4, 5 and 6, filed and introduced as evidence upon the trial of this cause, be by the Clerk of this court forwarded to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, there to be inspected and considered, together with the transcript of the record on appeal in this cause.

JEREMIAH NETERER,

District Judge.

[Indorsed]: Order to Transmit Original Exhibits.

[**Deposition of Reed (Thomas) Cochran, for  
Libellant.**]

*In the United States District Court for the Western  
District of Washington, Northern Division.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libellant,

vs.

S. S. "JEANIE," Her Tackle, etc.,  
Respondent.

ALASKA COAST COMPANY,  
Claimant.

ANSWERS TO INTERROGATORIES AND  
CROSS-INTERROGATORIES.

BE IT REMEMBERED, that pursuant to the stipulation hereunto annexed, on the 16th day of January, A. D., 1915, at my office in the Seward Building, at Juneau, in the Territory of Alaska, before me, A. W. Fox, a Notary Public in and for the Territory of Alaska, residing at Juneau, duly commissioned and sworn and authorized to administer oaths, personally appeared Reed Cochrane, a witness produced on the part of the Libellant herein in the above-entitled action now pending in the said court, who, being by me duly sworn, was then and there examined by me on the attached interrogatories and cross-interrogatories, and testified as follows:

**Answer of Reed (Thomas) Cochrane (to Interrogatories and Cross-interrogatories)].**Interrogatory  
No.

1. Reed Cochrane. Juneau, Alaska.
2. I was second officer.
3. I have eight years' experience on the bridge in the waters north of Puget Sound.
4. As to the frequency of storms, it is pretty hard to say; but in the winter months we always figure heavy weather; and then there is the difficulty of short days in the winter.
5. She attempted first to get into Gypsum. Could not get in there owing to the weather conditions, and went [395] from there to Sitka. We got in there and discharged and left for Sulzer. Owing to stress of weather we could not get in there and put into Ketchikan. From Ketchikan we went to Bonanza Cove, I think it is called, and loaded some fish there. From there we went to Chomley and loaded salmon. From Chomly we sailed for Seattle. We may have stopped at Ketchikan but I am not sure about that.
6. She took the safest course, but it was not the usual course. It was owing to tidal conditions that she could not take the shortest course through Peril Straits. The captain figured he could make time by going outside instead of waiting for tides at Peril Straits. The open ocean is always safer than running in proximity to land.

7. To save time. It is the shortest course.
  8. It was unusually severe. It was continuously rough until the day we got into Sitka. Shortly after getting in there it started again to blow and snow.
  9. We, of course, could not ascertain the damage; but we figured she must have made some water laboring outside there.
  10. So far as I know she was perfectly seaworthy and in a condition to take cargo. Yes, she was leaking, but whether she was leaking any more than usual I could not say.
  11. She was seaworthy or I would not have been in her. As far as leaking is concerned, naturally she was leaking just the same—that is to the usual extent, that is, to the best of my knowledge.
  12. I did not.
  13. It was exceptionally heavy weather. With a few exceptions we had a gale of wind—heavy head winds—right into Seattle.
  14. There was no apparent damage, no.
  15. In the Gulf of Georgia.
  16. I should judge between 65 and 70 miles an hour.
- [396]
17. No, I do not. When the ship got down to Seattle we were paid off and of my own knowledge I know nothing of the condition of the cargo.

ANSWERS TO CROSS-INTERROGATORIES  
BY REED (THOMAS) COCHRANE.Cross-Interrogatory  
No. 1.

1. I shipped on board as second officer and as pilot. I had nothing to do with the stowing or care of the cargo. I was standing a six-hour watch with the captain in the navigation of the ship. We were standing alternate six-hour watches.
2. I started to sea in 1898 and had fourteen years' experience up to then. I had a master's license in 1912. I got my second mate's license in 1906.
3. About six years.
4. I had been on the "Jeannie" but that was several years prior to the trip in question. I have not been on her since that trip.
5. She was seaworthy to the best of my knowledge or I would not have shipped on her.
6. Yes, about five years.
7. I don't remember ever to have been on one that did not leak some.
8. No.
9. On the trip on the "Saratoga" in 1898, I think we experienced the hardest gales I have ever been in in Alaska waters. We figured it blew about 90 miles an hour. The sea, of course, was very high. On this trip we were running outside. I cannot remember any particular instances but in the winter time it is a bad trip. The weather is worse and the



days are short, only five or six hours of daylight. There is also snow.

10. No, I have not.
11. I was on duty part of the time. My watch in the Gulf on this trip was from midnight until six in the morning. She made heavy weather. The "Jeanie" was shipping water and it stopped her headway considerably. I cannot say what effect it had on the "Jeanie" otherwise.
12. During my watch, I should say she averaged about two and one-half knots an hour.
13. Why it was the duty of the captain and myself. I am familiar with the entries.
14. It covers it all right—it does so far as I remember.
15. As stated in my answer to Interrogatory No. 14, the entries appear to be correct, as I remember them.
16. ("Claimant's Identification 1" is marked by the notary "Cochrane's Exhibit 1" and attached to this deposition.)
17. So far as I know they were. They did not break down to my knowledge. I never heard of the pumps being out of order.
18. I am not positive but we figured she did.
19. The course taken was safer than the outside route. It was on this part of the trip that we figured she opened up her seams. She was laboring there.
20. I got my information from the charts and from my own personal knowledge.

21. I answered that cross-interrogatory by saying that she was seaworthy.
22. She was seaworthy and was not leaking any more than the pumps could handle. There was no necessity for repairs.
23. She was not leaking any more than an ordinary wooden vessel would leak after the weather she had been through. The pumps could safely handle the water. I had no personal knowledge of any leaking. I only heard it.
24. I spoke to both Charley and Otto Burekhardt. They spoke to me about making a deposition as to weather conditions on the trip. This was last summer. My testimony is not influenced by any such conversations. There was nothing in writing.
25. I am still a seafaring man but am now stevedoring for the Pacific Coast Company, the Alaska Steamship Company and the Admiral Line at Juneau. The trip on the "Jeanie" was the last one I made to sea. I went inside shortly after that.

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[398]

### **Claimant's Identification "I."**

COCHRANE'S EXHIBIT No. 1.—A. W. F.

Vessel proceeded on usual course for Gypsum, Alaska, but owing to heavy gales and rough seas it was deemed best not to call in at this port, and vessel proceeded on for Sitka, experiencing high winds and heavy cross seas, and on

- Dec. 24th arrived at Sitka, Alaska. Discharged coal at this port and on
- Dec. 27th sailed for Sulzer via the outside, but owing to S. W. gales and heavy seas and ship laboring heavily and shipping heavy seas, turned around and went into Cape Ommany for shelter and laid to from about 11:00 P. M. until on
- Dec. 28th at about 5:25 A. M. when proceed to Sulzer via the inside. Experienced strong S. W. winds with snow squalls, and during the evening heavy S. E. gales. On
- Dec. 29th experienced heavy S. E. gales. Ship unable to make headway and at 8:30 A. M. turned around and went into Ketchikan, arriving there at about 1:43 P. M. Discharged coal at this port, and on
- Dec. 30th sailed for Yes Bay, arriving there at 12:17 P. M., took on board cargo of salmon, and on
- Jan. 1st sailed for Bonanza Cove, experiencing thick heavy snow with strong easterly gales; arriving at 12:20 P. M. took on board portion cargo fish, and at 10:51 P. M. sailed for Chomley. Experienced moderate southerly wind, thick snow, and on
- Jan. 2d arrived at about 9:50 A. M. Took on portion cargo salmon, and on
- Jan. 3d sailed for Ketchikan. Experienced

thick, heavy snow, [399] southerly winds, arriving at Ketchikan at 12:19 P. M. At 3:56 P. M. sailed for Seattle. During the day experienced more or less heavy gales with continuous snow, and on

Jan. 6th vessel experienced easterly gales, vessel straining and laboring heavily, and shipping large quantities of water. On

Jan. 7th Experienced similar heavy weather, vessel shipping large quantities of water and straining to such an extent that vessel leaked considerably, necessitating that pumps be worked every hour, and on

Jan. 8th. at about 11:55 A. M. arrived at Seattle. During the entire trip south vessel experienced exceptional heavy weather, shipping tremendous quantities of water over her decks at times; the decks never being dry, either from the heavy seas or snow, and vessel leaked on the trip south considerably more than usual, necessitating keeping the pumps going more or less continuously. [400]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

S. S. "JEANIE," Her Tackle, etc.,

Respondent,

ALASKA COAST COMPANY,

Claimant.

**Certificate of Notary [to Deposition of Reed  
Cochrane.]**

United States of America,  
Territory of Alaska,—ss.

I, A. W. Fox, a notary public, duly commis-  
sioned and sworn, in and for the First District of  
Alaska, and residing at Juneau, duly authorized un-  
der and by virtue of the acts of Congress of the  
United States, and by the Revised Statutes of the  
United States to take depositions in civil causes de-  
pending in the courts of the United States, do hereby  
certify that, pursuant to the foregoing stipulation,  
personally appeared before me, on the 16th day of  
January, 1915, Reed Cochrane, a witness on behalf  
of the libelant in the above-entitled cause; and that  
said witness was first cautioned and sworn by me to  
testify the truth, the whole truth and nothing but  
the truth; and the annexed deposition of said witness  
was by me reduced to writing in shorthand in the

presence of the witness and thereafter transcribed, the signature of said witness being expressly waived by said stipulation. I have retained the said deposition in my possession for the purpose of forwarding the same with my own hand to Hon. Frank Crosby, Clerk of the United States District Court for the Western District of Washington, Seattle, Washington, the court for which the same is taken. [401]

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and official seal, this 16th day of January, 1915.

[Seal]

A. W. FOX,

Notary Public in and for the Territory of Alaska,  
Residing at Juneau.

Notary Public for Alaska. My commission expires on May 27th, 1918. [401½]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

S. S. "JEANIE," Her Tackle, etc.,  
Respondent,

ALASKA COAST COMPANY,  
Claimant.

**Stipulation for Taking Testimony at Juneau.**

IT IS HEREBY STIPULATED AND AGREED by and between the proctors for the parties hereto that the deposition of Thomas Cochrane, a witness on behalf of the libelant herein, may be taken before A. W. Fox, a notary public residing at Juneau, Alaska, at his office in the Seward Building in said city, at such time as may be convenient to said notary public and said witness, upon the interrogatories and cross-interrogatories attached hereto.

It is further stipulated and agreed that, after the witness, deposing pursuant hereto, has been duly cautioned and sworn, his testimony may be taken down in shorthand and transcribed and, after being so transcribed, may be returned to the above-entitled court without being subscribed by the witness, the signature of the witness thereto being expressly waived.

It is further stipulated and agreed that such tes-

timony may be considered and used in evidence in this cause, subject to all objections except as to form of the questions.

It is further stipulated and agreed that, upon the completion of the taking of such deposition, the said notary public shall return the same, in a sealed envelope, together with this stipulation, and the interrogatories and cross-interrogatories attached [402] hereto, to the above-entitled court, addressing the same to "Hon. Frank Crosby, Clerk of the United States District Court for the Western District of Washington, Seattle, Washington," and writing across the end of the envelope the title of said cause and "Deposition of Thomas Cochrane, Witness for Libelant."

Dated this 2d day of January, 1915.

KERR & McCORD,  
C. H. HANFORD,  
Proctors for Libelant.

BOGLE, GRAVES, MERRITT & BOGLE,  
Proctors for Respondent and Claimant. [403]

**Interrogatories to be Propounded to and Answered  
Under Oath by Thomas Cochrane, Witness in  
Behalf of the Libelant.**

1. State your full name and place of residence.
2. What was your position as an officer of the steamship "Jeannie" at the time of her voyage from Seattle to Alaska and return in December, 1912, and January, 1913?
3. State the extent of your experience in the navigation of steamships in the waters of Alaska and the Coast north of Puget Sound.



4. State what you know to be the conditions with respect to the frequency and severity of storms in the winter-time along the route traversed by steamships between Seattle and the ports or places in Alaska at which the "Jeannie" called, or attempted to go on the voyage referred to in Interrogatory Number 2.
5. To what places did the "Jeannie" go, and attempt to go on the voyage above referred to, after taking in cargo at Chilkoot?
6. Did the "Jeannie" take the usual or safest course in attempting to go from Gypsum to Sulzer?
7. For what reason did the "Jeannie" attempt to go to Sulzer by going outside into the open ocean, in preference to any other route which she might have taken? [404]
8. What kind of weather was encountered by the "Jeannie" on said voyage from the time of leaving Gypsum until she arrived at Sitka? State particularly the facts as you remember them with respect to the severity and duration of storms or heavy weather encountered in that part of said voyage.
9. State as far as you know, what, if any, damage the "Jeannie" suffered during that part of said voyage.
10. What was the apparent condition of the "Jeannie" as to being seaworthy and capable of carrying cargo safely after the last of her coal cargo had been discharged at Ketchikan?

State particularly if you know whether she was at that time leaking.

11. State the facts as you remember them with respect to the apparent condition of the "Jeannie" at the time of taking her final departure from Ketchikan after the last of her cargo of salmon had been taken on board, with respect to her seaworthiness, and especially whether she was or was not leaking.
12. Did you give personal attention to the state of the "Jeannie" at that time, with respect to any excess of bilge water, and with respect to the effectiveness of her pumps?
13. What weather conditions were encountered by the "Jeannie" on said voyage from the time of leaving Ketchikan until arrival at Seattle? State particularly with reference to the severity and duration of storms or heavy weather.
14. State, if you know, whether there was any apparent damage suffered by the "Jeannie," caused by storms or heavy [405] weather in that last part of her return voyage, and especially in the Gulf of Georgia.
15. In a comparison of weather conditions encountered by the "Jeannie" after passing Seymour Narrows on her return voyage with the weather conditions on that part of said voyage previous to arrival at Sitka, where were the heaviest storms encountered?
16. Give your estimate of the force of the heaviest gale encountered on said return voyage in the Gulf of Georgia; I mean the velocity of the wind in miles per hour.

17. Do you know or can you set forth any matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause?

If yea, set forth the same fully and at large in your answer. [406]

Cross-Interrogatories to be Propounded to and Answered under Oath by the Witness, THOMAS COCHRANE.

Cross-interrogatory No. 1.

If in answer to Interrogatory No. 2 you state that you were 2d officer of the S. S. "Jeanie" in December, 1912, and January, 1913, state what your duties were as such officer, both with relation to stowing and caring for cargo and also as to navigating the ship.

Cross-interrogatory No. 2.

How long had you held 2d officer's papers, and how long had you been a seafaring man prior to December, 1912?

Cross-interrogatory No. 3.

How long had you been an officer on vessels navigating Alaska waters prior to December, 1912?

Cross-interrogatory No. 4.

How long had you been aboard the S. S. "Jeanie" prior to the voyage in question. Did you make any voyages on the "Jeanie" subsequent to this particular voyage?

Cross-interrogatory No. 5.

What was the condition of the "Jeanie," as to

seaworthiness, at the time she left Seattle on this particular voyage?

Cross-interrogatory No. 6.

Had you had any previous experience on wooden vessels?

Cross-interrogatory No. 7.

If so, state whether or not it is a usual and customary thing for wooden vessels to take in a small amount of water, at all times.

Cross-interrogatory No. 8.

Did the "Jeanie" take in any unusual amount of water— [407] any more than her pumps could safely take care of, on her north-bound voyage up to her arrival at Chilkoot, Alaska?

Cross-interrogatory No. 9.

If in answer to Interrogatory No. 4, you make a statement as to frequency and severity of storms on Alaska route, give particular instances, strength of wind, condition of sea and vessel upon which you were engaged at time and place of such storms.

Cross-interrogatory No. 10.

Have you ever encountered any worse weather on the inland waters of Alaska than you encountered on the "Jeanie" on this particular trip? If so, state all such occasions, giving name of vessel, place of storm, etc.

Cross-interrogatory No. 11.

Were you on duty at time "Jeanie" encountered storm, on this voyage in Gulf of Georgia? If so, state the extent of same and what effect it had on "Jeanie."

## Cross-interrogatory No. 12.

How much headway did "Jeanie" make during course of this storm?

## Cross-interrogatory No. 13.

Whose duty was it aboard the "Jeanie" to make entries in the ship's log? Are you familiar with entries made in "Jeanie's" log during the south-bound voyage of the "Jeanie"?

## Cross-interrogatory No. 14.

Referring to attached paper marked "Claimant's Identification 1" does the same give a true and correct account of the "Jeanie's" voyage from December 24th to January 8th as the same appeared in the ship's log-book?

## Cross-interrogatory No. 15.

If you do not remember the entries in the ship's log [408] of this voyage, state whether or not the said paper gives a true and correct account of the "Jeanie's" voyage on the dates therein mentioned according to your best recollection of said voyage. If not, state in what particulars the said entries are erroneous.

## Cross-interrogatory No. 16.

Have the said paper marked by the notary public before whom your testimony is taken as "Cochran's Exhibit 1" and attach same to your answers and have same returned to the above Court as a part of your testimony.

## Cross-interrogatory No. 17.

Were the "Jeanie's" pumps in good condition when she left Seattle, northbound, on this voyage? When, if at any time, did these pumps break down?

What caused them to break down (if you testify that they did break down)? What was done to repair them and how long were they out of order?

Cross-interrogatory No. 18.

State, if you know, whether the "Jeanie" opened up any of her deck seams or seams in her hull during heavy weather encountered by her.

Cross-interrogatory No. 19.

If you answer Interrogatory No. 6 in the negative, state in what respects such course was unsafe—also state what damage if any of the "Jeanie" suffered thereby.

Cross-interrogatory No. 20.

If you attempt to answer Interrogatory No. 7, state from whom you received your information.

Cross-interrogatory No. 21.

If in answer to Interrogatory No. 10, you state that the "Jeanie" was unseaworthy or leaking, state in what respects she was unseaworthy and at what points she was leaking, also [409] state whether or not you as an officer of said vessel called the master's attention to this fact, or made an effort to repair said vessel.

Cross-interrogatory No. 22.

If in answer to Interrogatory No. 11, you state that the "Jeanie" was unseaworthy or leaking, state in what respects she was unseaworthy or at what points she was leaking, also state whether you as an officer of said vessel called the master's attention to this fact or made an effort to repair the same.

Cross-interrogatory No. 23.

If in answer to either Interrogatory No. 10 or 11,

you state that the "Jeanie" was leaking, state the extent of such leaking, whether or not the same was more than a wooden vessel ordinarily leaks, or more than the "Jeanie's" pumps could safely take care on. When did you first notice such leaking and, if you know, what caused the same?

Cross-interrogatory No. 24.

State whether or not you have talked or communicated with Mr. Burckhardt or any representative of the Alaska Pacific Fisheries with reference to your testimony in this case, if so with whom and at what time did you have such conversation? Is your testimony in this case in any way influenced or your recollection of the facts in connection with such voyage refreshed or in any way influenced by such conversation or communication? If such communication is in writing attach the same hereto.

Cross-interrogatory No. 25.

Are you at the present time a seafaring man? If not when did you quit the sea? [410]

[Indorsed]: Stipulation for Taking of Testimony of Thomas Cochrane. Deposition of Reed (Thomas) Cochrane, a Witness for Libelant. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 22, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. Published May 11, 1915, per Order of Court. Frank L. Crosby. By Ed. M. Lakin, Deputy. [411]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

S. S. "JEANIE," Her Tackle, etc.,  
Respondent.

ALASKA COAST COMPANY,  
Claimant.

**Answer [of Thomas Banbury] to Interrogatories  
and Cross-interrogatories.**

BE IT REMEMBERED, that pursuant to the stipulation hereunto annexed, on the 13th day of January, A. D. 1915, at my office in the Seward Building, at Juneau, in the Territory of Alaska, before me, A. W. Fox, a notary public in and for the Territory of Alaska, residing at Juneau, duly commissioned and sworn and authorized to administer oaths, personally appeared Thomas Banbury, a witness produced on the part of the Respondent and Claimant herein in the above-entitled action now pending in the above-entitled court, who, being by me first duly sworn, was then and there examined by me on the attached interrogatories and cross-interrogatories, and testified as follows:



## ANSWERS OF THOMAS BANBURY.

## Interrogatory.

- No. 1. Thomas Banbury; age, 36; Juneau, Alaska;  
Dock agent.
- No. 2. Purser.
- No. 3. Yes.
- No. 4. Alaska coastwise freight service. Purser.
- No. 5. Receiving and delivering freight; noting  
its condition; making billing; collect-  
ing the revenue.
- No. 6. Yes. [412]
- No. 7. Yes, they are in my handwriting.
- No. 8. Yes, I identify the documents marked No.  
37, No. 38 and No. 39 attached hereto.

Documents marked 37, 38 and 39 identified by wit-  
ness and marked by Notary, "Banbury Exhibit 1,"  
"Banbury Exhibit 2" and "Banbury Exhibit 3"  
respectively.

- No. 9. It was executed at Chilkoot, Alaska. It is  
a record of the number of cases of sal-  
mon received aboard the ship. It is the  
original bill of lading. It was the  
practice to make four copies of a bill  
of lading. Two of them were de-  
livered to the cannery people, one was  
the retain copy for the ship and one  
copy was turned into the office of the  
ship at Seattle. Owing to the lapse of  
time, I am unable to state positively  
whether four copies were made on this  
particular occasion. The bill of lading  
was made out at the cannery on this

occasion and at least one copy was given to the watchman in charge, and I may, as I sometimes did, have mailed a copy to the cannery people below. The cannery on this trip was closed and was in charge of a watchman.

- No. 10. "Banbury Exhibit No. 2" seems to be an impression copy. It was made at Yes Bay, Alaska. It is a record of the number of cases of salmon received aboard. I am unable to state, owing to lapse of time, whether four copies were made of this Banbury Exhibit 2. Banbury Exhibit 3 is an original. It was made at Chomley, Alaska. It is a record of the number of cases of salmon received aboard. I am unable to state, owing to lapse of time, how many copies were made of this bill of lading. [413]
- No. 11. I do not remember the names of any of the three watchmen *to I* gave bills of lading but I knew them to be the watchmen in charge at the respective canneries.
- No. 12. I knew them in every case to be the watchmen in charge. They in each case at the different canneries delivered the salmon to me. I cannot say, after this lapse of time, whether there was anybody else at any of the canneries. I dealt with the watchmen in charge at

each of the three canneries in question.

- No. 13. The cases to be loaded were blocked out by the watchmen. I personally in each case checked the shipments.
- No. 14. 38 is an impresison copy and 39 is a retain in ink. I am unable to say whether originals were in same form as document 37. The name "Alaska Barge Company" should have been crossed out in every instance. I don't know whether or not it was in this.
- No. 15. In the employ of W. F. Swan Co.
- No. 16. Yes.
- No. 17. I do not remember.
- No. 18. I don't know.
- No. 19. Yes, almost continuous rough weather in Lynn Canal, Chatham Straits, round Cape Ommany, off the west coast of Barranoff Island and outside of Sitka Sound.
- No. 20. The ship was bucking head-seas most of the time while going through the Gulf of Georgia. I do not know how long it took going through the Gulf.
- No. 21. I am satisfied that the ship was cleaned up in the holds and 'tween-decks when the salmon went into her.
- No. 22. I could observe the conditions of the cans and labels from the condition of the broken cases set aside.
- No. 23. No. [414]

- No. 24. Double tarpaulins were used on each hatch.  
They were in good condition.

ANSWERS TO CROSS-INTERROGATORIES BY  
T. BANBURY.

Cross-Int.

- No. 1. Yes, I was an employee of the company  
—purser of the “Jeanie.”
- No. 2. W. F. Swan.
- No. 3. I was purser of the boat and had the usual  
authority of a purser.
- No. 4. Yes.
- No. 5. They were made out at the various canner-  
ies at the time the various shipments  
were taken on board.
- No. 6. Yes.
- No. 7. I do not remember having taken any ex-  
ceptions.
- No. 8. They were prepared and signed by myself.
- No. 9. I don’t know any reason why Captain  
Karbbe should sign them.
- No. 10. One copy was to the watchman in charge  
at each of the three canneries. I may  
have mailed a copy of the bills of lad-  
ing to the cannery companies below;  
but I don’t remember at this time. A  
retain copy was kept by the ship and  
one copy was turned into the steam-  
ship office at Seattle.
- No. 11. I did not tell Mr. Burckhardt that no cop-  
ies were left at the different canneries.  
As stated before, there was one copy  
given to each watchman at the respec-

tive canneries. The rest of the question with this exception I answer in the affirmative.

No. 12. I left a copy of the bill of lading with each of the watchmen as stated in my answer to Cross-interrogatory No. 11, and I think I mailed a copy to the canning companies below. [415]

**[Banbury Exhibit No. 1.]**

**ORIGINAL SHIPPING ORDER.**

Chilkoot Wharf.

Dec. 19, 1912.

Delivered to W. F. Swan & Co. (hereinafter named Carrier) by Ala. Pacific Fisheries to be forwarded by S. S. Jeanie or by some other barge or steamer owned or controlled by said Carrier, the property enumerated hereon, same being apparently in good order except as otherwise noted, the value, weight, quantity, quality and condition of contents being unknown to said Carrier, and to be forwarded with such dispatch as the general business of the Carrier will permit and delivered at vessel's tackle at the port or landing of Seattle in like good order as received (but with the option to the master to carry the property on deck, to deviate and to lighter, transship, land and reship the said property or any part thereof, and to stop and land and to receive passengers and freight at intermediate ports or places) unto the consignee, or if shipment is to be carried beyond above-named port or landing, to connecting Carrier or forwarder, he or they paying

freight at tariff rates (unless otherwise agreed) on delivery, and charges advanced by Carrier and average, and to secure the payment of freight and charges the said property is hereby pledged to the Carrier. The said property to be received, held, carried and delivered by said Carrier, subject to all the stipulations and conditions hereon and on the reverse side hereof under which conditions rates are quoted and property is received for transportation, and to all of which the shipper hereby agrees; and Notice of arrival of said goods at said port is hereby waived.

Name of consignee—Kelly Clarke.

Destination—Seattle.

Marked.

N. B. Shipments must not be accepted until all above blanks are properly filled. Consignments to Order must not be accepted unless name of some resident is given to notify of arrival. Freight must be marked with proper shipping mark and full name of place of destination—initials not accepted; such terms as “Mdse.,” “Sundries,” etc., must not be used in place of proper descriptive details. [416]

No. of Pkgs.	Articles.	Weight.	Feet.
		Subject to Correction.	
3077	c/s Trolling Brand Salmon	1#	
5903	Spear “ “	1#	
1658	Coho-Mkd C	A V	
10638	M		

T. BANBURY,  
Purser.

Banbury Exhibit “I.” A. W. F.

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Agent or Wharfinger.

Shippers desiring lower rates, when such are conditional upon shipments being released or at Owner's Risk, or upon valuation, must sign release clause on the back hereof. [417]

### CONDITIONS.

The barge or steamers on which the property herein described shall be forwarded, shall have leave to tow and assist vessels; to sail with or without pilots; to tranship to any other steamers owned or controlled by said Carrier; to lighter from steamer to steamer, or to and from steamer and shore; to transfer to and from hulks, to ship by other carrier or conveyance goods destined for ports or places off the route, or beyond the port of discharge of said steamer, but under no circumstances shall the carrier be held responsible for any damage to or loss of said property after the same shall be unhooked from the vessel's tackle.

The Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea, or other waters, 'by fire from any cause and wheresoever occurring; by barratry of the master or crew, by enemies, pirates, robbers, by arrest and restraint of princes, rulers, or people, riots, strikes or stoppage of labor, by explosion, bursting of boilers, breakage of shafts, or any patent defect in hull, machinery or appurtenances, by collisions, stranding, or other accidents of navigation of whatever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want

of due diligence by the owners of the ship or any of them.

The Carrier shall not be responsible for leakage of oils, liquor or other liquids, breakage of glass or queensware, injury to or breakage of glass, looking-glasses, show-cases or picture frames, stoves, hollow-ware, or other frail castings, or for breakage of any property packed in boxes, barrels, crates or bales when such packages do not present evidence of rough handling or improper stowage, or for any injury to the hidden contents of packages, or for breakage resulting from the fragile nature of the freight, or from chafing, wet or rust, resulting from the imperfect or insecure packing or insufficient cooperage, or the result of shipping without packing; or for loss in weight of coffee, grain or any other freight packed in bags, or for loss in weight of rice in tierces, sugar in barrels, or for the decay of perishable articles, or damage to any article [418] arising from the effect of heat or cold, sweating or fermentation or by reason of its own inherent vice or liability, or for loss or damage resulting from providential causes, or for damage to tobacco caused by stains to packages or by sweating or fermentation; or damage to cargo by vermin, burning, or explosion of articles on freight or otherwise, or loss, or damage on account of inaccuracy or omissions in marks or descriptions, or from unavoidable detention or delay; nor for loss of specie, bullion, bank notes, government notes, bonds or consuls, jewelry or any property of special value, unless shipped under its proper title or name, and extra freight paid thereon.



Livestock to be carried at owner's risk. Pelts, dry hides, butter and eggs, boxes, and other packages, must be each and every package marked with the full address of the consignee, and if not so marked, it is agreed that the delivery of the full number of packages, without regard to quality, shall be deemed a correct delivery and in full satisfaction of this receipt.

Advance charges shall be paid to Carrier, vessel or property lost or not lost at any stage of the entire transit, and if freight and charges are not paid within thirty days after notice to consignee of arrival of vessel at port or place of destination, the Carrier may sell the said property at public or private sale and apply the proceeds in payment of freight, storage and all other charges; or the master may dispose at any time of any article of a perishable nature when in his opinion the said article would become decayed or worthless before they could be delivered to the consignee or owner.

The property shall be received by the consignees thereof at the vessel's tackle immediately on arrival of the vessel at the port or place of delivery, without regard to weather; if the consignee is not on hand to receive the property, as discharged, then the Carrier may deliver it to the wharfinger, or other party or person believed by said Carrier to be responsible, and who will take charge of said property and pay freight on same, or the same may be kept on board or landed and stored in hulks, or put in lighters, by the Carriers, at the expense and risk of the owner, [419] shipper or consignee, and at his or their

risk of any nature whatever. And further, that in case the vessel should be prevented by stress of weather or other cause from entering the port or place of delivery, or from discharging the whole or any part of her cargo there, the said property may, at the option of the master or agent, be conveyed upon said vessel to the contract in regard to the original voyage, and at the risk of the owner, shipper or consignee of said property.

*nearest or other port, and thence returned to the port of delivery by the same or other vessel, subject to all the provisions of this*

The person or party delivering any property to the said vessel or Carrier for shipment, is authorized to sign the shipping receipt for the shipper. The Carrier shall in no event be liable for any injury to said property, or for any damage or loss suffered by the owner, or by the consignee thereof, unless its negligence or the negligence of its officers or servants shall have occasioned the same; and in the event that the Carrier shall become liable for any such injury, damage or loss, it shall have the benefit of any insurance procured on the said property. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship at the custom house. On delivery of the property enumerated as provided herein, this receipt shall stand canceled, whether surrendered or not.

All claims for damage to or loss of any property to be presented to the Carrier or the nearest agent thereof within ten days from date of notice thereof—

the arrival of vessel at port or place of discharge, or the knowledge of the stranding or loss of vessel to be deemed notice,—and that after sixty days from such date no action, suit or proceeding in any court of justice shall be brought for any damage to or loss of said property; and a failure to present such claim within said ten days, or to bring suit within said sixty days, shall be deemed a conclusive bar and release of all right to recover against the vessel or its master, said Carrier or any of the stockholders thereof, for any damage or loss. Claim for loss or of damage to any of the said property shall be restricted to the cash value of the same at the port of shipment at the date of shipment.

On the happening of any accident, whereby the steamer shall become [420] disabled, the Carrier is hereby authorized to forward the freight or property to the port of delivery by other conveyances at the option of the master, and shall receive extra compensation for such service whether performed by the Carrier's own vessel or those of strangers; and in case of salvage service rendered to the freight or property during the voyage by a vessel or vessels of the said Carrier, such salvage service shall be paid for as fully as if such salving vessel or vessels belonged to strangers.

The Carrier shall not be required to deliver the property at the port of delivery in any specific or particular time, or to meet any particular market.

The Carrier shall not be held liable or responsible for any loss or damage resulting from the nondelivery or misdelivery of property, on account of its

not being properly marked with shipping mark and name of port of delivery, and should it be found on the cargo being discharged, that goods have been landed without marks, or with marks differing from those on the shipping receipt, or with marks and numbers not distinguishable, the same shall be apportioned to the different incomplete or short consignment lots, and consignees shall conform to such allotment.

It is understood that the Carrier's vessels are warranted seaworthy only so far as due care in the appointment or selection of agents, superintendents, pilots, masters, officers, engineers and crew can secure it; and the Carrier shall not be liable for loss, detention or damage arising directly or indirectly from latent defects in boilers, machinery, or any part of the vessel, provided reasonable measures have been taken to secure efficiency.

In case the barge or steamer shall be prevented from reaching her destination by quarantine, the Carrier may discharge the property into any depot, lazzaretto or other receptable, and such discharge shall be deemed a final delivery, and all quarantine expenses of whatsoever kind on the property shall be borne by the owner thereof and shall be a lien thereon.

General average shall be computed and payable according to the York-Antwerp rules of 1890 or according to American rules, as the Carrier may elect. [421]

In all cases when the word Carrier is used herein as representing or as in place of the Alaska Barge

Co. it is also understood to cover and include its stockholders and vessels and the masters thereof.

These conditions and stipulations to run to all connecting water carriers and the delivery of property or freight to a connecting carrier by land shall be understood as an acceptance by the shipper and owner of the conditions and stipulations of such shipping receipt as is used by connecting Carrier in its local business at the place of transfer.

**OWNER'S RISK OR RELEASE.**—When rate is named subject to owner's risk, which means that shippers assume responsibility for all damage to property in transit not arising from gross negligence of carriers, shipper must write below, the words indicating whether of breakage, chafing, leakage, etc. When two rates are provided, the lower conditioned on release, the Release Clause below must be signed by shipper, otherwise higher rate will be charged.

**VALUATION.**—When rate is conditioned on valuation, shipper must express on release below valuation under which they desire to ship.

### RELEASE.

I hereby certify that I desire to receive the benefits of any lower rates provided for freight conditional upon carriers being released or at Owner's Risk of \*——— or at value of —— per —— and in consideration of such lower rates being ap-  
——

\*Special attention is called to above clauses referring to owner's risk or release, and valuation.

plied on the within-named shipment, I hereby assume all risk necessary to receive such benefits.

Shippers will sign here.

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Shipper.

**[Banbury Exhibit No. 2.]**

ORIGINAL SHIPPING RECEIPT

Yes Bay Wharf.

12/31, 1912.

Received by Alaska Barge Company (hereinafter named Carrier) from Ala. Pacific Fisheries to be forwarded by S. S. | Jeanie or by some other barge or steamer owned or controlled by said Carrier, the property enumerated hereon, same being apparently in good order except as otherwise noted, the value, weight, quantity, quality and condition of contents being unknown to said Carrier, and to be forwarded with such dispatch as the general business of the Carrier will permit and delivered at vessel's tackle at the port or landing of Seattle in like good order as received (but with the option to the master to carry the property on deck, to deviate and to lighter, transship, land and reshipe the said property or any part thereof, and to stop and land and to receive passengers and freight at intermediate ports or places) unto the consignee, or if shipment is to be carried beyond above-named port or landing, to connecting Carrier or forwarder, he or they paying freight at tariff rates (unless otherwise agreed) on delivery, and charges advanced by Carrier and average, and to secure the payment of freight and charges the said property is hereby pledged to the Carrier. The

said property to be received, held, carried and delivered by said Carrier, subject to all the stipulations and conditions hereon and on the reverse side hereof under which conditions rates are quoted and property is received for transportation, and to all of which the shipper hereby agrees; and Notice of arrival of said goods at said port is hereby waived.

Name of Consignee—Kelly Clarke Co.

Destination—Seattle.

Marked.

N. B. Shipments must not be accepted until all above blanks are properly filled. Consignments to Order must not be accepted unless name of some resident is given to notify of arrival. Freight must be marked with proper shipping mark and full name of place of destination—initials not accepted, such terms as “Mdse,” “Sundries,” etc., must not be used in place of proper descriptive details. [423]

No. of Pkgs.	Articles.	Weight.	Feet.
		Subject to Correction.	
3124	e/s Empire Brand		
4427	“ Mandarin “		
960	“ Surf “		
4001	“ Victor “		
1052	“ Spear “		
463	“ Trolling “		
<hr/>			
14027			

Banbury Exhibit 2. A. W. F.

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Agent or Wharfinger.

Shippers desiring lower rates, when such are conditional upon shipments being released or at Owner's Risk, or upon valuation, must sign release clause on the back hereof. [424]

## CONDITIONS

The barge or steamers on which the property herein described shall be forwarded, shall have leave to tow and assist vessels; to sail with or without pilots; to transship to any other steamers owned or controlled by said Carrier; to lighter from steamer to steamer, or to and from steamer and shore; to transfer to and from hulks, to ship by other carrier or conveyance goods destined for ports or places off the route, or beyond the port of discharge of said steamer, but under no circumstances shall the Carrier be held responsible for any damage to or loss of said property after the same shall be unhooked from the vessel's tackle.

The Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea, or other waters, by fire from any cause and wheresoever occurring; by barratry of the master or crew, by enemies, pirates, robbers, by arrest and restraint of princes, rulers, or people, riots, strikes or stoppage of labor, by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collisions, stranding, or other accidents of navigation of whatever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them.

The Carrier shall not be responsible for leakage of oils, liquor or other liquids, breakage of glass or queensware, injury to or breakage of glass, looking



glasses, show cases or picture frames, stoves, hollow-ware, or other frail castings, or for breakage of any property packed in boxes, barrels, crates or bales when such packages do not present evidence of rough handling or improper stowage, or for any injury to the hidden contents of packages, or for breakage resulting from the fragile nature of the freight, or from chafing, wet or rust, resulting from the imperfect or insecure packing or insufficient cooperage, or the result of shipping without packing; or for loss in weight of coffee, grain or any other freight packed in bags, or for loss in weight of rice in tierces, sugar in barrels, or for the decay of perishable articles, or damage to any article [425] arising from the effect of heat or cold, sweating or fermentation or by reason of its own inherent vice or liability, or for loss or damage resulting from providential causes, or for damage to tobacco caused by stains to packages or by sweating or fermentation; or damage to cargo by vermin, burning, or explosion of articles on freight or otherwise, or loss, or damage on account of inaccuracy or omissions in marks or descriptions, or from unavoidable detention or delay; nor for loss of specie, bullion, bank notes, government notes, bonds or consuls, jewelry or any property of special value, unless shipped under its proper title or name, and extra freight paid thereon.

Live stock to be carried at owner's risk. Pelts, dry hides, butter and eggs, boxes, and other packages, must be each and every package marked with the full address of the consignee, and if not so marked, it is

agreed that the delivery of the full number of packages, without regard to quality, shall be deemed a correct delivery and in full satisfaction of this receipt.

Advance charges shall be paid to Carrier, vessel or property lost or not lost at any stage of the entire transit, and if freight and charges are not paid within thirty days after notice to consignee of arrival of vessel at port or place of destination, the Carrier may sell the said property at public or private sale and apply the proceeds in payment of freight, storage and all other charges; or the master may dispose at any time of any article of a perishable nature when in his opinion the said articles would become decayed or worthless before they could be delivered to the consignee or owner.

The property shall be received by the consignees thereof at the vessel's tackle immediately on arrival of the vessel at the port or place of delivery, without regard to weather; if the consignee is not on hand to receive the property, as discharged, then the Carrier may deliver it to the wharfinger, or other party or person believed by said Carrier to be responsible, and who will take charge of said property and pay freight on same, or the same may be kept on board or landed and stored in hulks, or put in lighters, by the Carriers, at the expense and risk of the owner, [426] shipper or consignee, and at his or their risk of any nature whatever. And further, that in case the vessel should be prevented by stress of weather or other cause from entering the port or place of delivery, or from discharging the whole or any part of

her cargo there, the said property may, at the option of the master or agent, be conveyed, upon said vessel to the contract in regard to the original voyage, and at the risk of the owner, shipper or consignee of said property.

nearest or other port, and thence returned to the port of delivery by the same or other vessel, subject to all the provisions of this

The person or party delivering any property to the said vessel or Carrier for shipment, is authorized to sign the shipping receipt for the shipper. The Carrier shall in no event be liable for any injury to said property, or for any damage or loss suffered by the owner, or by the consignee thereof, unless its negligence or the negligence of its officers or servants shall have occasioned the same; and in the event that the Carrier shall become liable for any such injury, damage or loss, it shall have the benefit of any insurance procured on the said property. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship at the custom house. On delivery of the property enumerated as provided herein, this receipt shall stand cancelled, whether surrendered or not.

All claims for damage to or loss of any property to be presented to the Carrier or the nearest Agent thereof within ten days from date of notice thereof—the arrival at port or place of discharge, or the knowledge of the stranding or loss of vessel to be deemed notice,—and that after sixty days from such date no action, suit or proceeding in any court of

justice shall be brought for any damage to or loss of said property; and a failure to present such claim within said ten days, or to bring suit within said sixty days, shall be deemed a conclusive bar and release of all right to recover against the vessel or its master, said Carrier or any of the stockholders thereof, for any damage or loss. Claim for loss or of damage to any of the said property shall be restricted to the cash value of same at the port of shipment at the date of shipment.

On the happening of any accident, whereby the steamer shall become [427] disabled, the Carrier is hereby authorized to forward the freight or property to the port of delivery by other conveyances at the option of the master, and shall receive extra compensation for such service whether performed by the Carrier's own vessels or those of strangers; and in case of salvage service rendered to the freight or property during the voyage by a vessel or vessels of the said Carrier, such salvage service shall be paid for as fully as if such salving vessel or vessels belonged to strangers.

The Carrier shall not be required to deliver the property at the port of delivery in any specific or particular time, or to meet any particular market.

The Carrier shall not be held liable or responsible for any loss or damage resulting from the non-delivery or misdelivery of property, on account of its not being properly marked with shipping mark and name of port of delivery, and should it be found on the cargo being discharged that goods have been landed without marks, or with marks differing from

those on the shipping receipt, or with marks and numbers not distinguishable, the same shall be apportioned to the different incomplete or short consignment lots, and consignees shall conform to such allotment.

It is understood that the Carrier's vessels are warranted seaworthy only so far as due care in the appointment or selection of agents, superintendents, pilots, masters, officers, engineers and crew can secure it; and the Carrier shall not be liable for loss, detention or damage arising directly or indirectly from latent defects in boilers, machinery, or any part of the vessel, provided reasonable measures have been taken to secure efficiency.

In case the barge or steamer shall be prevented from reaching her destination by quarantine, the Carrier may discharge the property into any depot, lazaretto or other receptacle, and such discharge shall be deemed a final delivery, and all quarantine expenses of whatsoever kind on the property shall be borne by the owner thereof and shall be a lien thereon.

General average shall be computed and payable according to the York-Antwerp rules of 1890, or according to American rules, as the Carrier may elect.  
[428]

In all cases when the word Carrier is used herein as representing or as in place of the Alaska Barge Co. it is also understood to cover and include its stockholders and vessels and the masters thereof.

These conditions and stipulations to run to all connecting water Carriers and the delivery of prop-

erty of freight to a connecting Carrier by land shall be understood as an acceptance by the shipper and owner of the conditions and stipulations of such shipping receipt as is used by connecting Carrier in its local business at the place of transfer.

**OWNER'S RISK OR RELEASE**—When rate is named subject to owner's risk, which means that shippers assume responsibility for all damage to property in transit not arising from gross negligence of carriers, shipper must write below, the words indicating whether of breakage, chafing, leakage, etc. When two rates are provided, the lower conditioned on release, the Release Clause below must be signed by shipper, otherwise higher rate will be charged.

**VALUATION**—When rate is conditioned on valuation, shipper must express on release below valuation under which they desire to ship.

### RELEASE

I hereby certify that I desire to receive the benefits of any lower rates provided for freight conditional upon carriers being released or at Owner's Risk of \* . . . . . or at value of . . . . . per . . . . . and in consideration of such lower rates being applied on the within-named shipment, I hereby assume all risk necessary to receive such benefits.

Shippers will sign here.

---

Shipper.

\*Special attention is called to above clauses referring to owner's risk or release, and valuation.

**[Banbury Exhibit No. 3.]**

## ORIGINAL SHIPPING RECEIPT

Chomly Wharf.

Received by Alaska Barge Company (hereinafter named Carrier) from Ala. Pacific Fisheries to be forwarded by S. S. Jeanie or by some other barge or steamer owned or controlled by said Carrier. the property enumerated hereon, same being apparently in good order except as otherwise noted, the value, weight, quantity, quality and condition of contents being unknown to said Carrier, and to be forwarded with such dispatch as the general business of the Carrier will permit and delivered at vessel's tackle at the port or landing of Seattle in like good order as received (but with the option to the master to carry the property on deck, to deviate and to lighter, transship, land and reship the said property or any part thereof, and to stop and land and to receive passengers and freight at intermediate ports or places) unto the consignee, or if shipment is to be carried beyond above-named port or landing, to connecting Carrier or forwarder, he or they paying freight at tariff rates (unless otherwise agreed) on delivery, and charges advanced by Carrier and average, and to secure the payment of freight and charges the said property is hereby pledged to the Carrier. The said property to be received, held, carried and delivered by said Carrier, subject to all the stipulations and conditions hereon and on the reverse side hereof under which conditions rates are quoted and property is received for transportation,

and to all of which the shipper hereby agrees; and Notice of arrival of said goods at said port is hereby waived.

Name of Consignee—Kelly Clarke.

Destination—Seattle.

Marked.

N. B. Shipments must not be accepted until all above blanks are properly filled. Consignments to Order must not be accepted unless name of some resident is given to notify of arrival. Freight must be marked with proper shipping mark and full name of place of destination—initials not accepted, such terms as “Mdse,” “Sundries,” etc., must not be used in place of proper descriptive details. [430]

No. of Pkgs.	Articles.	Weight.	Feet.
		Subject to Correction.	
2500	c/s Bugle Brand Salmon		
2500	“ Victor “ “		
<hr/>			
5000			

Banbury Exhibit 3. A. W. F. [431]

### CONDITIONS.

The barge or steamers on which the property herein described shall be forwarded, shall have leave to tow and assist vessels; to sail with or without pilots; to transship to any other steamers owned or controlled by said Carrier; to lighter from steamer to steamer, or to and from steamer and shore; to transfer to and from hulks, to ship by other carrier or conveyance goods destined for ports or places off the route, or beyond the port of discharge of said steamer, but under no circumstances shall the Carrier be held responsible for any damage to or loss of said property after the same shall be unhooked from the vessel's tackle.



The Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea, or other waters, by fire from any cause and wheresoever occurring; by barratry of the master or crew, by enemies, pirates, robbers, by arrest and restraint of princes, rulers, or people, riots, strikes or stoppage of labor, by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collisions, stranding, or other accidents of navigation of whatever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them.

The Carrier shall not be responsible for leakage of oils, liquor or other liquids, breakage of glass or queensware, injury to or breakage of glass, looking glasses, show cases or picture frames, stoves, hollow-ware or other frail castings, or for breakage of any property packed in boxes, barrels, crates or bales when such packages do not present evidence of rough handling or improper stowage, or for any injury to the hidden contents of packages, or for breakage resulting from the fragile nature of the freight, or from chafing, wet or rust, resulting from the imperfect or insecure packing or insufficient cooperage, or the result of shipping without packing; or for loss in weight of coffee, grain or any other freight packed in bags, or for loss in weight of rice in tierces, sugar in barrels, or for the decay of perishable articles, or damage to any article [432]

arising from the effect of heat or cold, sweating or fermentation or by reason of its own inherent vice or liability, or for loss or damage resulting from providential causes, or for damage to tobacco caused by stains to packages or by sweating or fermentation; or damage to cargo by vermin, burning, or explosion of articles on freight or otherwise, or loss, or damage on account of inaccuracy or omissions in marks or descriptions, or from unavoidable detention or delay; nor for loss of specie, bullion, bank notes, government notes, bonds or consuls, jewelry or any property of special value, unless shipped under its proper title or name, and extra freight paid thereon.

Live stock to be carried at owner's risk. Pelts, dry hides, butter and eggs, boxes, and other packages, must be each and every package marked with the full address of the consignee, and if not so marked, it is agreed that the delivery of the full number of packages, without regard to quality, shall be deemed a correct delivery and in full satisfaction of this receipt.

Advance charges shall be paid to Carrier, vessel or property lost or not lost at any stage of the entire transit, and if freight and charges are not paid within thirty days after notice to consignee of arrival of vessel at port or place of destination, the Carrier may sell the said property at public or private sale and apply the proceeds in payment of freight, storage and all other charges; or the master may dispose at any time of any article of a perishable nature when in his opinion the said articles would become decayed or worthless before they could be

delivered to the consignee or owner.

The property shall be received by the consignees thereof at the vessel's tackle immediately on arrival of the vessel at the port or place of delivery, without regard to weather; if the consignee is not on hand to receive the property, as discharged, then the Carrier may deliver it to the wharfinger, or other party or person, believed by said Carrier to be responsible, and who will take charge of said property and pay freight on same, or the same may be kept on board or landed and stored in hulks, or put in lighters, by the Carriers, at the expense and risk of the owner.

[433] shipper or consignee, and at his or their risk of any nature whatever. And further, that in case the vessel should be prevented by stress of weather or other cause from entering the port or place of delivery, or from discharging the whole or any part of her cargo there, the said property may, at the option of the master or agent, be conveyed upon said vessel to the contract in regard to the original voyage, and at the risk of the owner, shipper or consignee of said property.

*nearest or other port, and thence returned to the port of delivery by the same or other vessel, subject to all the provisions of this*

The person or party delivering any property to the said vessel or Carrier for shipment, is authorized to sign the shipping receipt for the shipper. The Carrier shall in no event be liable for any injury to said property, or for any damage or loss suffered by the owner, or by the consignee thereof, unless its negligence or the negligence of its officers or ser-

vants shall have occasioned the same; and in the event that the Carrier shall become liable for any such injury, damage or loss, it shall have the benefit of any insurance procured on the said property. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship at the custom house. On delivery of the property enumerated as provided herein, this receipt shall stand canceled, whether surrendered or not.

All claims for damage to or loss of any property to be presented to the Carrier or the nearest Agent thereof within ten days from date of notice thereof—the arrival of vessel at port or place of discharge, or the knowledge of the stranding or loss of vessel to be deemed notice—and that after sixty days from such date no action, suit or proceeding in any court of justice shall be brought for any damage to or loss of said property; and a failure to present such claim within said ten days, or to bring suit within said sixty days, shall be deemed a conclusive bar and release of all right to recover against the vessel or its master, said Carrier or any of the stockholders thereof, for any damage or loss. Claim for loss or of damage to any of the said property shall be restricted to the cash value of same at the port of shipment at the date of shipment.

On the happening of any accident, whereby the steamer shall become [434] disabled, the Carrier is hereby authorized to forward the freight or property to the port of delivery by other conveyances at the option of the master, and shall receive extra com-

compensation for such service whether performed by the Carrier's own vessels or those of strangers; and in case of salvage service rendered to the freight or property during the voyage by a vessel or vessels of the said Carrier, such salvage service shall be paid for as fully as if such salving vessel or vessels belonged to strangers.

The Carrier shall not be required to deliver the property at the port of delivery in any specific or particular time, or to meet any particular market.

The Carrier shall not be held liable or responsible for any loss or damage resulting from the non-delivery or misdelivery of property, on account of its not being properly marked with shipping mark and name of port of delivery, and should it be found on the cargo being discharged, that goods have been landed without marks, or with marks differing from those of the shipping receipt, or with marks and numbers being not distinguishable, the same shall be apportioned to the different incomplete or short consignment lots, and consignees shall conform to such allotment.

It is understood that the Carrier's vessels are warranted seaworthy only so far as due care in the appointment or selection of agents, superintendents, pilots, masters, officers, engineers and crew can secure it; and the Carrier shall not be liable for loss, detention or damage arising directly or indirectly from latent defects in boilers, machinery or any part of the vessel, provided reasonable measures have been taken to secure efficiency.

In case the barge or steamer shall be prevented

from reaching her destination by quarantine, the carrier may discharge the property into any depot, lazaretto or other receptacle, and such discharge shall be deemed a final delivery, and all quarantine expenses of whatsoever kind on the property shall be borne by the owner thereof and shall be a lien thereon.

General average shall be computed and payable according to the York-Antwerp rules of 1890, or according to American rules, as the Carrier may elect. [435]

In all cases when the word Carrier is used herein as representing or as in place of the Alaska Barge Co. it is also understood to cover and include its stockholders and vessels and the masters thereof.

These conditions and stipulations to run to all connecting water carriers and the delivery of property or freight to a connecting carrier by land shall be understood as an acceptance by the shipper and owner of the conditions and stipulations of such shipping receipt as is used by connecting Carrier in its local business at the place of transfer.

**OWNER'S RISK OR RELEASE**—When rate is named subject to owner's risk, which means that shippers assume responsibility for all damage to property in transit not arising from gross negligence of carriers, shipper must write below, the words indicating whether of breakage, chafing, leakage, etc. When two rates are provided, the lower conditioned on release, the Release Clause below must be signed by shipper, otherwise higher rate will be charged.

**VALUATION**—When rate is conditioned on val-

uation, shipper must express on release below valuation under which they desire to ship.

RELEASE.

I hereby certify that I desire to receive the benefits of any lower rates provided for freight conditional upon carriers being released or at Owner's Risk of\* \_\_\_\_\_ or at value of \_\_\_\_\_ per \_\_\_\_\_ and in consideration of such lower rates being applied on the within named shipment, I hereby assume all risk necessary to receive such benefits.

Shippers will sign here.

\_\_\_\_\_,  
Shipper.

United States of America,  
Territory of Alaska,—ss.

I, A. W. Fox, a notary public in and for the Territory of Alaska, an officer duly authorized to administer oaths in said Territory do hereby certify that the above and foregoing deposition of T. Banbury, was taken before me at Juneau on the 13th day of January, 1915, in pursuance of the stipulation hereto annexed; that before the said deposition was so taken said witness was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in said cause; that thereupon I propounded to said witness the annexed and foregoing direct and cross-interrogatories to be propounded to such wit-

\*Special attention is called to above clauses referring to owner's risk or release, and valuation.

ness, and thereupon the answers of said witness to the said interrogatories and cross-interrogatories so propounded to him were by me taken in shorthand and thereafter transcribed in typewriting and are attached hereto and returned herewith; and I do further certify that I am not counsel nor attorney for either of the parties in said depositions and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and affixed my official seal this 16th day of January, 1915.

[Seal]

A. W. FOX,

Notary Public for Alaska.

My commission expires May 27th, 1918. [437]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

S. S. "JEANIE," Her Tackle, etc.,

Respondent,

ALASKA COAST COMPANY,

Claimant.

**Stipulation to Take Testimony at Juneau, Alaska.**

It is hereby stipulated and agreed by and between proctors for the parties hereto that the deposition of T. Banbury, a witness on behalf of respondent and



claimant may be taken before A. W. Fox, a notary public residing at Juneau, Alaska, at his office in the Seward Building in said city, at such time as may be convenient to said notary public, and said witness upon the interrogatories and cross-interrogatories attached hereto.

It is further stipulated and agreed that after the witness deposing pursuant hereto has been duly cautioned and sworn that his testimony may be taken in shorthand and transcribed, and after being so transcribed may be returned to the above-entitled court without being subscribed by the witness, the signature of the witness thereto being expressly waived.

It is further stipulated and agreed that such testimony may be considered and used in evidence in this cause subject to all objections except as to form of the questions.

It is further stipulated and agreed that upon the completion of the taking of such deposition, the said notary public shall return the same in a sealed envelope together with this stipulation and the interrogatories and cross-interrogatories attached hereto to the above-entitled court, addressing the same [438] to "Hon. Frank Crosby, Clerk of the District Court of the United States for the Western District of Washington, Seattle, Washington," and writing across the end of the envelope the title of said cause and "Deposition of T. Banbury, witness for Claimant."

Done this 31st day of December, 1914.

KERR & McCORD,  
C. H. HANFORD,  
Proctors for Libelant.

BOGLE, GRAVES, MERRITT & BOGLE,  
Proctors for Respondent and Claimant. [439]

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[**Deposition of Thomas Banbury, for Claimant.**]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

S. S. "JEANIE," Her Tackle, etc.,  
Respondent.

ALASKA COAST COMPANY,  
Claimant.

**DIRECT INTERROGATORIES.**

Interrogatories to be administered to T. Banbury, a witness to be produced, sworn and examined in a certain cause of Admiralty and Maritime jurisdiction now pending in the District Court of the United States for the Western District of Washington, Northern Division, wherein Alaska Pacific Fisheries, a corporation, is libelant against the steamship "Jeanie" her tackle, etc., is respondent, and the Alaska Coast Company, a corporation, is claimant, on the part and behalf of claimant.

(Deposition of Thomas Banbury.)

Interrogatory No. 1.

State your name, age, place of residence and present business or profession.

Interrogatory No. 2.

What business or profession were you engaged in in the year 1912?

State whether or not you were aboard the S. S. "Jeanie" in December, 1912, and January, 1913.

Interrogatory No. 3.

[440]

Interrogatory No. 4.

If you answer interrogatory 3 in the affirmative, state in what trade the S. S. "Jeanie" was engaged at said time and what position you held aboard said vessel at said time.

Interrogatory No. 5.

If in answer to fourth interrogatory you state that you held the position of purser aboard the "Jeanie," state in a general way the duties of that position aboard the "Jeanie."

Interrogatory No. 6.

Was it your custom or a part of your duty, as such purser, to execute bills of lading or shipping receipts for cargo taken aboard the "Jeanie" during the course of her voyage?

Interrogatory No. 7.

Referring to three documents attached hereto, numbered in the upper left hand corner with numerals 37, 38 and 39, respectively, the first or number 37 being dated Dec. 19, 1912, Chilkoot Wharf, the second or number 38, being dated Dec. 31, 1912,

(Deposition of Thomas Banbury.)

Yes Bay Wharf, and the third or number 39, being dated Jan. 2, 1913, Chomly Wharf, and state whether or not the said three documents are in your hand-writing—that is the written portion thereof as distinguished from the printed matter. .

Interrogatory No. 8.

If you answer preceding interrogatory in the affirmative, state whether or not you can identify said documents as documents having been issued by you. If so, have the notary public mark the said documents as “Banbury’s Exhibit 1,” “Banbury’s Exhibit 2” and “Banbury’s Exhibit 3,” respectively, and return the same as a part of your testimony herein.

Interrogatory No. 9.

If in answer to interrogatory 8, you identify the [441] said documents and have had the same marked as requested, state where and for what purpose document marked “Banbury’s Exhibit 1” was executed, also whether or not the same is an original or a copy—also number of copies made by you—and disposition of both original and copies, that is to whom delivered.

Interrogatory No. 10.

Give the same information as to documents numbered 38 and 39, which you were requested in interrogatory 8 to have marked “Banbury’s Exhibit 2” and “Banbury’s Exhibit 3,” respectively.

Interrogatory No. 11.

If in answer to interrogatories 9 and 10, you state that either the original or a copy of documents

(Deposition of Thomas Banbury.)

marked "Banbury's Exhibit 1," "Banbury's Exhibit 2" and "Banbury's Exhibit 3" were delivered to the agent or representative of the shipper of the goods or merchandise shown on the said documents at the places, where the same was shipped, that is Chilkoot, Yes Bay and Chomly respectively, state if you know the name of such person or persons and their official position with the shipper, if any.

Interrogatory No. 12.

If in answer to preceding interrogatory, you are unable to give the name or official position of such persons, state if there were any other persons at such places and if so whether or not the person to whom you delivered said documents (if you testify that you did deliver them) represented himself as the agent of the shipper?

Interrogatory No. 13.

Who checked the number of cases of salmon put aboard the "Jeanie" at the places mentioned in the attached shipping receipts on behalf of the shipper or owner of the cargo? [442]

Interrogatory No. 14.

If you identify such documents as having been issued by you state whether or not documents numbered 38 and 39 are copies, and if so state whether the originals were in same form as document numbered 37. Was the name Alaska Barge Company printed in heavy type on 38 and 39 crossed out and "W. F. Swan Co." written in in pencil as appears on 37, or not?

(Deposition of Thomas Banbury.)

Interrogatory No. 15.

Were you in the employ of the "Alaska Barge Company" or the "W. F. Swan Co." on this trip of the "Jeanie"?

Interrogatory No. 16.

State, if you remember, the conditions of weather encountered by the S. S. "Jeanie" on the trip in question.

Interrogatory No. 17.

Did the "Jeanie" encounter any rough weather prior to her arrival at Chilkoot, Alaska, if so what was the extent of same?

Interrogatory No. 18.

State if you know whether the "Jeanie" was leaking or taking in any unusual amount of water on her north-bound voyage prior to arriving at Chilkoot.

Interrogatory No. 19.

Did the "Jeanie" encounter any rough weather after leaving Chilkoot prior to her arrival at Yes Bay, Alaska? If so, state the extent of same, where encountered and length of time the ship was in the said weather.

Interrogatory No. 20.

Did the "Jeanie" encounter any rough weather on her south bound voyage—after leaving Ketchikan? If so state the extent and duration of same.

Interrogatory No. 21. [443]

State if you know the precaution, if any, taken by the officers and crew of the "Jeanie" to clean out the ship's holds and 'tween decks prior to taking aboard salmon on this voyage.

(Deposition of Thomas Banbury.)

Interrogatory No. 22.

Did you know or have any means of knowing the condition of the cans, labels, etc., inside the salmon cases at the time the same was loaded aboard the "Jeanie," on this voyage, at the various canneries?

Interrogatory No. 23.

State if you know the condition of the S. S. "Jeanie" at the time of leaving Seattle and also at the time of arriving at Chilkoot, Alaska, on this voyage, as to her seaworthiness or not.

Interrogatory No. 24.

State if you know the number of tarpaulins used in covering different hatches of the "Jeanie" after cargo was loaded and condition of same. [444]

**CROSS-INTERROGATORIES TO BE PRO-  
POUNDED TO AND ANSWERED UNDER  
OATH BY THE WITNESS, T. BANBURY.**

1. Were you, during the time of your service as purser of the steamship "Jeanie," an officer, stockholder, agent or employee of the Alaska Coast Company, owner of said steamship?

If yea, state what your relationship was to said Company, and particularly with reference to the time of the voyage of said steamship from Seattle to Alaska and return in the months of December, 1912, and January, 1913.

2. By whom were you employed as purser of the "Jeanie"?

3. Did you, during the time of the voyage specified in Cross Interrogatory Number 1, have any authority to act for, or represent said steamship

(Deposition of Thomas Banbury.)

“Jeanie,” her owner, or charterer, or charterers, other than the authority pertaining to the office of purser of a steamship?

If yea, state the particulars as to the nature and extent of such other or additional authority, and by whom in what manner conferred; if you had written authorization, produce the writing, if you are able to do so.

4. If any bills of lading were issued on shipments of cases of canned salmon by the Alaska Pacific Fisheries from Chilkoot, Yes Bay and Chomly on the return trip of the “Jeannie” in December, 1912, and January, 1913, did you, yourself make out such bills of lading, or write therein, specifying the number of cases and brands of each shipment? [445]

5. State when and where such bills of lading, if any, were made up and signed.

6. When the cases of salmon were being taken on board the “Jeannie” at Chilkoot, Yes Bay and Chomly, did you personally count the number of cases received, and observe the apparent condition of same?

7. Have you any knowledge with respect to any of the cans of salmon in the cases in either of the warehouses or canneries at Chilkoot, Yes Bay or Chomly, being wet or not in good order fit for transportation?

If yea, state the particulars.

8. If bills of lading for the salmon received at Chilkoot, Yes Bay and Chomly were prepared, were they signed?

If yea, who signed them?



(Deposition of Thomas Banbury.)

9. If you know any reason for Captain Karbbe's failure to sign bills of lading for the salmon received at Chilkoot, Yes Bay and Chomly, state what it was.

10. If bills of lading for the salmon received at Chilkoot, Yes Bay and Chomly were signed by yourself, state when, where, and to whom they were delivered.

11. Did you inform F. O. Burckhardt in a conversation recently at Juneau, that bills of lading for the shipments of salmon received at Chilkoot, Yes Bay and Chomly were not delivered to anyone at either of said places, and that you were uncertain whether you delivered such bills of lading, after the arrival of the "Jeannie" at Seattle, to anyone representing the Alaska Pacific Fisheries, or the consignees, or that they may have been given to W. F. Swan to be by him delivered?

12. Give your version of the conversation, if any, [446] between you and F. O. Burekhardt at Juneau during November or the early part of December, 1914, with respect to bills of lading for said shipments of salmon.

[Indorsed]: Stipulation to Take Testimony at Juneau, Alaska. Direct Interrogatories. Deposition of T. Banbury, Witness for Claimant. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 22, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. Order publishing this deposition filed May 11, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [447]

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2570.

ALASKA FISHERIES COMPANY, a Corpora-  
tion,

Libelant,

vs.

THE STEAMSHIP "JEANIE," Her Tackle, Ap-  
parel, Furniture, etc.,

Respondent.

**Stipulation as to Facts.**

IT IS HEREBY STIPULATED that to avoid the necessity for producing evidence to prove the same, the following facts are admitted.

C. H. HANFORD,

KERR & McCORD,

Attorneys for Libelant.

BOGLE, GRAVES, MERRITT & BOGLE,

Attorneys for Respondent. [448]

In the month of December, 1912, the steamship "Jeanie," going northward on a voyage from Seattle to Alaska and return, was grounded in Wrangell Narrows and held several hours, until the first high tide thereafter, when she was pulled off by her own power, and proceeded on said voyage. That thereafter in the progress of the same voyage, the merchandise which in the libel herein is alleged to have been damaged, was received and taken on board said steamship for transportation to Seattle. [449]

That previous to the arrival of said steamship at Seattle, completing said voyage, no repairs were made, during the progress of said voyage. [450]

That going northward on said voyage said steamship carried in her hold, as part of her cargo, several hundred tons of coal in bulk, which was discharged at different places in Alaska, the last of which was not discharged until after the taking on board of that part of the libellant's merchandise which was received at Chilkoot.

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 21, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy. [451]

**[Memorandum Decision.]**

*United States District Court, Western District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES COMPANY, a Corporation,

Libellant,

vs.

THE STEAMSHIP "JEANNIE," Her Tackle, Apparel, Furniture, etc.,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

Filed June 25, 1915.

Libellant commenced an action against the steamship "Jeanie," a wooden vessel of about eight hun-

dred tons; and twenty-two years old, twelve to fourteen years of which time she had been plying the Alaskan and north Pacific Coast waters, and chartered in the spring of 1912 by W. F. Swan and W. C. Dawson for trade between Seattle and Alaskan points, for loss sustained to a cargo of salmon shipped from various points in Alaska to the city of Seattle, for damage occasioned to the salmon on account of improper dunnage and unseaworthy condition of the vessel, by reason of which the hold of the vessel was flooded. It appears that in the early part of December, 1912, the "Jeanie" left Seattle with a cargo of five or six hundred tons of coal and some merchandise for southern Alaskan ports. While north bound she was detained for several hours, on December 12th or 13th, in Wrangell Narrows, off the southeastern coast of Alaska, where she was anchored in shallow water and sank into about four feet of mud, but floated again with the return of the tide, and proceeded to Juneau, where she arrived on or about the 15th of December. The coal was to be delivered at Juneau, Gypsum, Sulzer, Sitka and Ketchikan. Owing to bad weather no stop was made at Gypsum or Sulzer. About 150 tons was delivered at Sitka, some at Juneau and some at Ketchikan. After leaving Juneau the vessel proceeded to Chilcoot where a [452] portion of libellant's salmon was loaded. The "Jeanie" then attempted to go to Gypsum, but owing to bad weather was compelled to go on to Sitka without stopping at Gypsum. From Sitka the vessel tried to go to Sulzer but was unable to stop there because of unusual weather, and pro-

ceeded to Ketchikan, where the balance of the coal was unloaded, and from there to Yes Bay and Chomly, where the balance of libelant's salmon was loaded, returning from there to Ketchikan, from which port she proceeded on her homeward voyage, January 3, 1913, and arrived in Seattle, January 8, 1913, after an unusually tempestuous voyage. The "Jeannie" received, on this trip, from libelant's canneries 10,747 cases of canned salmon at Chilkoot, 13,972 cases at Yes Bay, and 4,737 cases at Chomly, aggregating 29,657 cases, for transportation to Seattle. The "Jeannie" had made frequent trips to and from Alaska. No survey or inspection of the vessel was made between the time of her arrival in Seattle on her last preceding voyage and her departure from Seattle on the voyage in question. Her master and pilot as well as the charterers testified that they believed she was in good condition. A preliminary survey of the "Jeannie" was made June 22, 1912, and a thorough survey made July 26, 1912, in dry dock. Certain repairs were recommended and made, and the vessel certified to be in a good seaworthy condition and fit to carry dry and perishable cargo. No further repairs were made until September following, when some caulking was done around the steam winches on the deck, and other minor repairs made. The tarpaulins were insufficient to prevent leakage. Some of the coal was discharged before salmon was taken on. After coal was taken out of the hold, the hold was scrubbed, scraped, rubbed and made as clean as they thought it was necessary. There was no bulkhead between the salmon and the

coal remaining on the vessel when the first salmon was taken on. A loose plank was discovered in the forward part of the ship, in the middle of the hatch in the clear space [453] between the salmon and the coal, that had been lifted up by the force of the water and was lying to one side, which caused the water to wash the bilges and flood the salmon. The spikes in the plank had been driven into the knees or cross-beams of the ship which were not rotten, and the plank was again spiked to position and held. The plank was of soft wood and the only way the witness accounted for the loosening of the plank was that the water "just hammered underneath it until it lifted it up." The space in which the bilge water could accumulate underneath the plank and the outside planking on the bottom of the ship was about nine inches, and the witness thought the water in that space, working from side to side, would have enough force to loosen the plank, although he had never seen it happen to any other ship he was on, and he thought the only way the water got in to damage the cargo was through the seams of the ship opened by the straining of the vessel in the heavy seas. On re-direct examination, he stated that the plank that was loosened was about one and one-half feet from where the salmon was, and that it was apparently the same age, size and construction as the other planks of the ship. Upon arrival at the port of Seattle, it was found that the entire cargo was damaged from coal-dust and water. A special examination and survey of the cargo was made and notice of damage given to claimant, and with the knowledge and approval of

the owners, and in order to reduce the loss to a minimum, libelant caused the salmon to be overhauled and reconditioned.

Two amended libels were filed in this case; the first to conform to the testimony, and the last in the nature of a reply in conformity to Admiralty Rule 51.

**LIBEL FOR DAMAGE TO A CARGO OF SALMON—LIBELANT'S CLAIM ESTABLISHED.**

C. H. HANFORD, KERR & McCORD, for  
Libelant.

BOGLE, GRAVES, MERRITT & BOGLE, for  
Claimant. [454]

NETERER, District Judge (after stating the facts):

Recovery in this case, if it is to be had, must be upon the unseaworthy condition of the vessel, improper dunnage, or negligence in caring for the cargo. It is contended by claimant that the ship was seaworthy; and that if it was not actually seaworthy, it was operated with due diligence to make it so, and that it is exempted from liability by the stipulations of the bills of lading; that damage, if any, was due to the extraordinary rough weather, bringing the damage within the excepted perils of the sea; that the damage, if any, caused by coal-dust, was without fault or negligence on the part of the owners; and that if there is any liability, it is not nearly the amount claimed. I think the testimony in this case abundantly establishes the fact that the vessel was not in a seaworthy condition, especially in view of the presumptions of law which obtain in favor of

libelant. *The Patria*, 125 Fed. 425, 132 Fed. 971; *Wright v. Grace & Co.*, 203 Fed. 360. The fact that damage was occasioned by reason of water coming in contact with coal-dust, is conclusive, to my mind, that the proper diligence had not been exercised to place the hold of the ship in the condition that it should have been in to receive the salmon after the coal was taken out, or proper care taken in removing coal after some of the salmon had been loaded. Parties must exercise the diligence which the circumstances demand, and while it would not have been necessary to have taken greater precaution in cleaning the hold of the ship from the coal-dust than the sweeping, brushing and scrubbing which the testimony shows was done, or placing such covering over the salmon as shown, when taking coal out, to make the vessel fit to carry some cargoes, the officers of the ship must, at their peril, when they store a cargo of salmon which is labeled ready for the market, and which must be exposed for sale, and where the contact of water and coal-dust would be destructive of the attractability of the prepared eatables, exercise a greater degree of [455] care than otherwise, and the fact that the complaint was made with relation to the tarpaulins as being inadequate and insufficient and the loosening of the keelson plank underneath the hold, and the fact that water did get into the hold of the ship in the quantities which the evidence shows, are all conclusive, to my mind, that, taking into consideration the character of the cargo, the parties did not exercise that degree of care which the circumstances demanded, and unless they are excused



for some other reason, that liability attaches. I think, it being established that the salmon was in good condition when it was received, the legal presumption would be that any damage which was occasioned was occasioned through the negligence of the officers of the vessel—The Queen, 78 Fed. 156, and the Rappahannock, 184 Fed. 291. Nor is the presumption of unseaworthiness the only presumption arising where goods are shown to have been received by a carrier in good condition and delivered in a damaged condition. Negligence is presumed on the part of the master and crew in caring for the goods which are damaged during the progress of the voyage. In the Queen, *supra*, at pages 165–166, the Court said:

“In the present case, the claimant has introduced testimony to establish the seaworthy condition of the vessel when she set out on her voyage, and this testimony has not been contradicted. Now, if the only presumption of negligence arising out of the damaged condition of the merchandise was that the voyage had been commenced with a vessel in an unseaworthy condition, the court would be compelled to hold that the claimant had sufficiently answered the *prima facie* case made out by the libelants; but this does not appear to be the full scope of the presumption of negligence attributable to the carrier under this aspect of the case. Underlying the contract of implied warranty, on the part of the carrier, to use due care and skill in navigating the vessel and in carrying goods, and

it may be that, through such carelessness or negligence on the part of the carrier during the voyage, goods laden on board the vessel may suffer damage.”

As to the seaworthiness of the vessel the claimant is an insurer, and can only escape liability for water damage by reason of perils of the sea, that is “those perils which are peculiar to the sea, and which are of an extraordinary nature or arise from irresistible force or overwhelming power, and which cannot be guarded against [456] by the ordinary exertions of human skill and prudence.” *The Giulia*, 218, Fed. 744. While the evidence shows that the sea upon this voyage was tempestuous even for Alaskan waters, it was not such a condition as to bring it within this exception. As to the cargo, of course the same degree of diligence does not apply. A vessel, to be seaworthy, must be tight, staunch, strong, well furnished, manned and victualed, and in all respects equipped in the usual manner for the merchandise service in such trade. 3 Kent’s Commentaries, 205; *The Lillie Hamilton*, 218 Fed. 327. It must be fit and competent to carry the particular cargo which it engages to carry, *The Caledonia*, 157 U. S. 124; *Work v. Leathers*, 97 U. S. 379, and able to resist all ordinary action of the sea in the particular zone or sea which it engages to sail *Dupont de Nemours v. Vance*, 19 How. 162, and as said by Justice Day in *The Silvia*, 171 U. S. 464:

“The test of seaworthiness is whether the vessel is reasonably fit to carry the cargo which she has undertaken to transport.”

And again, in *The Southwark*, 191 U. S. 9:

“As seaworthiness depends not only upon the vessel being staunch and fit to meet the perils of the sea, but upon its character in reference to the particular cargo to be transported, it follows that the vessel must be able to transport the cargo which it is held out as fit to carry, or it is not seaworthy in that respect.”

It could not be reasonably contended that a vessel engaging to sail the Alaskan waters and carrying canned salmon could do so in a vessel which was not able to ride the seas in these particular waters during the particular season of the year in which the voyage was made, unless within the excepted sea perils, which is not shown; nor that canned salmon, as was this, to be sold to some extent because of the attractive appearance it would make upon exposition, could be stored in a hold of a ship in which coal had been carried, without taking every precaution to remove the particles of coal dust that were lodged there, and likewise to fortify against the waters of the sea and coal dust coming in [457] contact with the cargo. *The Lizzie W. Virden*, 8 Fed. 18, and 11 Fed. 903; *The Hudson*, 122 Fed. 96; *The Florida*, 69 Fed. 169; *The Mississippi*, 113 Fed. 985, and 120 Fed. 1020. The only evidence to rebut the presumptions is merely the statement of the master and some members of the crew and one of the charterers in which they say that the vessel was in apparently good condition and that precautions had been taken to take away the coal dust which they knew was lodged there. In *Corsar v. Spreckles*, 141 Fed. 261,

at page 269, Circuit Judge Ross said :

“Indeed, unless otherwise expressly stipulated, an implied warranty of unseaworthiness of the ship at the time of commencing the voyage accompanies every contract of affreightment. The *Caledonia*, 157 U. S. 130. And this includes, not only a ship seaworthy in hull and equipment, which conditions it is conceded the *Musselcrag* met, but also seaworthy in respect to the stowage of the cargo, *The Edwin I. Morrison*, 153 U. S. 211 (and other cases cited).”

In that case a ship was held liable for damage to a cargo of cement, where the ship, though not unseaworthy as to hull and equipment, was held unseaworthy as to stowage of cargo. The tarpaulins or hatch covers were not sufficient to prevent leakage, *The C. W. Elphicks*, 122 Fed. 439, in view of the voyage and the season of the year; nor is the ship released by reason of the stipulations in the bills of lading. The testimony, I think, is conclusive, that these bills of lading were not delivered to any of the officers of the libelant company. If they were issued, they were delivered to the watchmen at libelant's canneries, persons who were not connected with the libelant company in any official relation, and who were not in a capacity to negotiate with relation to the transportation. The record shows that there was an oral understanding between the parties with relation to the shipment of this cargo, and while no terms appear to have been detailed or specially understood, liability could not be limited except by mutual consent, and of the bills

of lading were not issued to any authoritative persons and there was no understanding with relation to them, then the libelant could not be bound by their stipulations. Mr. Justice Grey, in *The Caledonia*, 43 Fed. 681, where there was a preliminary agreement for transportation service and [458] subsequently a bill of lading containing exception clauses was signed and accepted by the libelant, and there was a loss in the market value of the cargo during the delay in reaching destination, said:

“When the parties have made such a contract, the ship owner cannot, without the shipper’s consent, vary its terms by inserting new provisions in a bill of lading. \* \* \* In the case at bar, the unseaworthiness of the vessel consisted in the unfitness of her shaft when she left port. \* \* \* The exception of ‘steam boilers and machinery, or defects therein,’ inserted in the midst of a long enumeration of various causes of damage, all the rest of which relate to matters happening after the beginning of the voyage, must, by elementary rules of construction, and according to the great weight of authority, be held to be equally limited in its scope, and not to affect the warranty of seaworthiness at the time of leaving port upon her voyage. \* \* \* A common carrier, receiving goods for carriage, and by whose fault they are not delivered at the time and place at which they ought to have been delivered, but are delivered at the same place afterward, and when their market value is less, is responsible to the owner of the goods

for such differences in value. \* \* \* The same general rule has been often recognized as applying to carriers by sea in this circuit as well as to the second circuit.”

And the Supreme Court of the United States, in 157 U. S. 124, in affirmance, said:

“In our opinion the ship owner’s undertaking is not merely that he will do and has done his best to make the ship fit, but that the ship is really fit to undergo the perils of the sea and other incidental risks to which she must be exposed in the course of the voyage; and this being so, that undertaking is not discharged because the want of fitness is the result of latent defects.”

In the *Pacific Coast Co. v. Yukon Independent Transportation Co.* (this circuit) 155 Fed. 29, the Court said, at page 37:

“But if, indeed, the parol testimony so admitted in evidence did have the effect to modify some of the provisions of the bills of lading, it was, under the circumstances disclosed in this case, admissible for that purpose, for the bills of lading were issued after the goods had been delivered on board the ‘Senator,’ and after they had passed from the control of the shipper, and the vessel was about to go on her way. The burden was then upon the carrier to show that its agents directed attention to the terms of the bills of lading and that the shipper assented to them. *The Arctic Bird* (D. C.) 109 Fed. 167; *Bostwick v. B. & O. R. Co.*, 45 N. Y. 712; *Strohm*

v. Detroit & M. Ry. Co., 21 Wis. 662; Mo. Pac. Ry. Co. v. Beeson, 30 Kan. 298, 2 Pac. 496; Mich. Cen. R. R. Co. v. Boyd, 91 Ill. 268.”

In this case, not only were the bills of lading not delivered to, and their stipulations called to the attention of, any officer or authorized agent of libelant, but they were delivered to watchmen [459] at the canneries, utter strangers to any responsible or authoritative head of libelant company.

Respondent contends that it is exempted from liability because of the Harter Act, and that there is no evidence that the master and crew of the vessel did not use due diligence to make the vessel seaworthy.

Under Section 1 of the Harter Act (27 Stat. at L. 445), it is unlawful for any vessel transporting merchandise to insert in any bill of lading or shipping document, any clause relieving it from liability “for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all merchandise or property committed to its \* \* \* charge.” By the terms of Section 2 of this act the owners or agents cannot insert in any bill of lading or shipping document, any clause lessening, weakening or avoiding the obligations of the owners, *to exercise due diligence* to properly equip, man, provision and outfit the vessel. Section 3 of this act exempts vessels from liability for loss or damage resulting from faults or errors in navigation or in the management of the vessel, or from losses arising from dangers of the sea or other navigable waters, acts of

God, or public enemies, or inherent defect in the thing carried, etc., provided the owner *shall have exercised due diligence* to make the vessel in all respects seaworthy and properly manned, equipped, and supplied. This act, from the conclusion we have arrived at from the testimony, cannot avail anything to the respondent. The Supreme Court of the United States in the *Carib Prince*, 170, U. S. 655, at page 660, says:

“Now, it is patent that the foregoing provisions (sec. 2, Harter Act) deal not with the general duty of the owner to furnish a seaworthy ship, but solely with his power to exempt himself from so doing by contract, when the particular conditions exacted by the statute obtain. Because the owner may, when he has used due diligence to furnish a seaworthy ship, contract against the obligation of seaworthiness, it does not at all follow that when he has made no contract to so exempt himself, he nevertheless is relieved from furnishing a seaworthy ship, and is subjected only to [460] the duty of using due *negligence*. To make it unlawful to insert in a contract a provision exempting from seaworthiness where due diligence has not been used, cannot by any sound rule of construction be treated as implying that where due diligence has been used, and there is no contract exempting the owner, his obligation to furnish a seaworthy vessel has ceased to exist. The fallacy of the construction relied on consists in assuming that because the statute has forbidden



the ship owner from contracting against the duty to furnish a seaworthy ship unless he has been diligent, that thereby the statute has declared that without contract no obligation to furnish a seaworthy ship obtains in the event due diligence has been used. And the same fallacy is involved in the contention that this construction is supported by the third section of the act."

It follows that the bills of lading being inoperative, respondent must not only show that due diligence was exercised in furnishing a seaworthy vessel, but that it was in fact seaworthy. It is contended by the respondent that the coal-dust damage, if any, was occasioned by an error in management or navigation, and within the protection of the third section of the Harter Act, and in support of this contention, cites *Corsar v. Spreckles*, supra. An examination of the case, I do not think, supports the contention. Judge Ross, pages 262, 63, says:

"It will thus be seen that by virtue of the Harter Act the ship is still held, as theretofore, responsible for loss or damage arising from negligence, fault, or failure in the proper custody, care or delivery of the cargo, and at the same time is exonerated from damage or loss resulting from faults or errors in navigation or in the management of the vessel, where due diligence has been exercised to properly man, equip, and supply it, and to make it in all respects seaworthy. It will not do to so construe these provisions as to make them nullify each other. On

the contrary, they must be so read as to give effect to each, if possible. Undoubtedly a fault or error in the navigation or management of a vessel carrying a cargo, may, and often does, result in injury to the 'custody, care and delivery' of the cargo. But if the owner of the vessel has performed his duty by making the vessel in all respects seaworthy for the voyage it undertakes, it is plain that neither he nor the vessel can be held responsible from any merely incidental damage resulting to the cargo from fault or error in its subsequent navigation or management, if section 3 of the act is to be given any force. \* \* \* In the case in hand, the record shows that for about seven weeks the ship in question struggled with wind and wave in an effort to round Cape Horn. \* \* \* The question confronting him (the master) was primarily and essentially one of navigation—how best, in view of the trying circumstances in which he was placed, to deal with the elements, and get his ship, with her crew and cargo, to the place of destination. That his action in determining that question was primarily and essentially one of navigation, does not, in our opinion, admit of the slightest doubt; and, being such, neither the ship nor her owner is responsible for [461] incidental damage sustained by the cargo, because of the provision of the third section of the act of Congress above referred to."

In that case the question was one of navigation

and clearly within the third section of the act. In this case the damage was occasioned by the water and coal-dust, by reason of the ship's officers' failure to properly prepare the hold and in handling or caring for the cargo, and not because of any error in management or navigation. In *The Jean Bart*, 197 Fed. 1002, at page 1105, the Court said:

“The question, therefore, is whether the failure to properly use the ventilating equipment is a fault of error in navigation or in the management of the ship,’ under the third section; or whether it is ‘negligence, fault or failure in proper \* \* \* care of \* \* \* merchandise or property committed’ to the charge of the claimant. It sometimes happens that the duty of the ship’s officers may relate both to the management of the ship and to the care of the cargo, and the rule has theretofore become established that the proper classification in law of such a duty depends upon the purpose to which it primarily relates. \* \* \* I am of the opinion that here the failure of the officers primarily related to the care of the cargo, and only incidentally, if at all, to navigation or the management of the ship.”

The master and crew, I do not think, used due care in protecting the cargo from the coal-dust and water, and respondent cannot find refuge within the provisions of Section 3 of the Harter Act..

Finally, it is contended that should a liability exist against the ship for any damage to the cargo that the full charge for reconditioning the salmon

should not be allowed, and that no damage should be allowed for the difference in the market value of the salmon as claimed, for the reason that the libelant at all times had sufficient salmon in stock to supply all of the orders received during the delay in the delivery, and quotes the following from Moore on Carriers, 2d ed., p. 623:

“Only actual damages, established by proof of facts from which they may be rationally inferred with reasonable certainty, are recoverable,”

And on page 624:

“Compensation for the actual loss sustained is the fundamental principle upon which our law bases the allowance of damages.” [462]

No issue can be taken to that as the basic principle underlying the law of damages, generally speaking. The testimony discloses that the charge made for reconditioning the salmon was a reasonable and ordinary charge; that the work done was necessary to place the salmon in as good condition as that in which it was received by the steamship “Jeanie.” The claim was paid by the libelant. It is contended by respondent that the so-called “market price” of salmon was not the price it could be sold for, but an arbitrary price at which the owners and dealers of salmon were willing to sell, and that the price was fixed by the Alaska Packers Association, the largest producer of canned salmon on the coast, arbitrarily, irrespective of supply and demand, and this quotation adopted by the other packers, and the subsequent reduction of price was fixed in the same arbitrary manner, and that Kelley-Clarke Co. handled

practically all of the salmon sold in the Seattle market, and all of libelant's pack for that year, and that when it received orders for salmon it apportioned the orders among its various members, taking into consideration kind, quantity, brands, etc., and that during this period of delay there were few orders for salmon at prices they were willing to accept, and that they had quantities of salmon of all brands belonging to libelant with which orders could be filled. This contention, I do not think, can be sustained by the evidence. There is no testimony upon which the Court would be justified in basing a conclusion of market value other than that contended for by the libelant. While there is some evidence upon which to base argument that the market price was merely an arbitrary price, bearing no relation to supply and demand, I think that a fair consideration of all of the testimony, bearing in mind the relation to the issue, does not justify the Court in adopting this as a conclusion. The market value is the price at which a commodity can be purchased in the open market, and there is no testimony of any other market value than that contended for. The measure of damages is stated [463] by Moore on Carriers, at page 410, as follows:

“In an action against a carrier of goods for failure to deliver the same within a reasonable time, the measure of damages is the difference in value of the merchandise at the time and place it ought to have been delivered in the usual course of transportation and at the time of its actual delivery or tender, whether the differ-

ence in value was occasioned by injury to the goods or was due to a decline in the market value, with interest added, and freight charges, if any unpaid, deducted.”

It was the duty of the parties to this litigation, upon discovery of damage, to lessen, if possible, the damage, and having chosen to recondition the salmon and thus diminish the claim, libelant is entitled to recover the cost and charges of reconditioning as well as the depreciation of the market price of the salmon during the reconditioning period, the delay in marketing being directly caused by the Carrier. The law presumes a loss equal to the depreciation in market value during the period of detention, and from the evidence, taking the market price as disclosed by the record as a basis which must be adopted by the Court, we find a loss in depreciation of \$7,935.00. The cost or value of reconditioning is \$4,283.06. I think that interest should be allowed at the legal rate upon the moneys expended by the libelant in reconditioning the salmon. Judge Deady, in *The Nith*, 36 Fed. 95 (Dist. Court, Ore.), said:

“Some of the authorities say that the allowance of interest should depend on circumstances. But I do not see why it should be disallowed in any case where the shipper is entitled to damages for non-delivery. From the date of such non-delivery the owner, by the fault of the carrier, is deprived of the use of the money or capital invested in the goods, and should have redress by being allowed legal interest thereon.”

The decision of the District Court in that case was

affirmed in 36 Fed. 383. From this expression, approved by the Circuit Court of this circuit, having found that libelant is entitled to recover, I think that it must also recover interest at the legal rate covering the period of detention.

The shipper having a right to resort to the vessel for damages growing out of failure to fulfill the contract for the [464] carrying of merchandise, by the maritime law, *The Belfast*, 7 Wall. 642, and *Dupont de Nemours v. supra*, a decree may be presented in accordance with the conclusions above announced.

JEREMIAH NETERER,

Judge.

[Indorsed]: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 25, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [465]

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*In the United States District Court for the Western  
District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

The Steamship "JEANIE," Her Tackle, Apparel,  
Furniture, etc.,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

**Decree.**

This cause having been commenced by the filing

in the office of the Clerk of this Court of a libel against the steamship "Jeanie," her tackle, apparel, furniture, etc., and a Writ of Monition and Attachment for the seizure of said vessel, her tackle, apparel, furniture, etc., having been issued and delivered to the United States Marshal for the District of Washington, which he returned into court with a bond for the release of said vessel, executed by the Alaska Coast Company, a corporation, as principal, and United States Fidelity & Guaranty Company, a corporation, as surety, in the sum of Fifteen Thousand Dollars (\$15,000), conditioned that the said Alaska Coast Company shall abide by and perform the decree of this Court in such cause; and the said Alaska Coast Company, a corporation, having filed its claim as owner of said vessel, her tackle, apparel, furniture, etc., and answered said libel, and the cause having been referred [466] to A. C. Bowman, United States Commissioner, to take and report the evidence, and amended pleadings having been filed by and on behalf of both said libelant and said claimant, and said Commissioner having returned into Court a transcript of the testimony taken, together with the exhibits introduced in evidence, and the cause having proceeded to a final hearing on the pleadings, evidence and arguments by the several proctors for the parties and the Court having heretofore filed its opinion in writing and being now sufficiently advised in the premises, it is

ORDERED, ADJUDGED and DECREED by the Court: That the Alaska Pacific Fisheries, a cor-



poration, the libelant, do have and recover of and from the Alaska Coast Company, a corporation, the claimant, and its surety, the said United States Fidelity & Guaranty Company, a corporation, the sum of \$4,283.06, with interest thereon at the rate of 6% per annum from the 8th day of April, 1913, to this date, amounting to the further sum of \$578.20; and the further sum of \$7,935.00, without interest prior to this date, amounting to the total sum of \$12,796.26, with interest on said total sum at the rate of 6% per annum from this date, and the libelant's costs and disbursements herein taxed and allowed at the sum of \$ ———, and that execution issue therefor.

Done in open court this 12th day of July, 1915.

JEREMIAH NETERER,  
Judge. [467]

Copy of within Proposed Decree received this 2d day of July, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,  
Proctors for Claimant.

[Indorsed]: Decree. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 12, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [468]

*In the United States District Court for the Western  
District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

The Steamship "JEANIE," Her Tackle, Apparel,  
Furniture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

### **Notice of Appeal.**

To Alaska Pacific Fisheries, a Corporation, Libelant  
Herein, and to Messrs. Kerr & McCord, and  
C. H. Hanford, Esquire, Proctors for Libelant,  
and to Frank L. Crosby, Clerk of Said Court:

YOU, AND EACH OF YOU, WILL PLEASE  
TAKE NOTICE that the Alaska Coast Company, a  
corporation, claimant herein, hereby appeals from  
the final decree made and entered herein on the 12th  
day of July, 1915, in favor of said libelant and  
against said claimant, and the stipulator, for the re-  
lease of said steamship "Jeanie," etc., for the sum  
of Twelve Thousand Seven Hundred Ninety-six Dol-  
lars and Twenty-six Cents (\$12,796.26), with inter-  
est thereon at the rate of six per cent (6%) per an-  
num from the date of said decree, together with  
libelant's costs and disbursements taxed at [469]  
Two Hundred and Four and 90/100 Dollars  
(\$204.90), and from each and every part of said de-

cree, to the next United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Seattle, Washington, this 30th day of July, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Claimant.

Due service of the foregoing Notice of Appeal, after the filing of the same in the office of the clerk of the above-entitled court, is hereby admitted by proctors for libelant this 30th day of July, 1915.

KERR & McCORD,

C. H. HANFORD,

Proctors for Libelant.

[Indorsed]: Notice of Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 30, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [470]

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*In the United States District Court for the Western  
District of Washington, Northern Division.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

The Steamship "JEANIE," Her Tackle, Apparel,  
Furniture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

**Order Fixing Supersedeas Bond on Appeal.**

The ALASKA COAST COMPANY, a corporation, claimant herein, having appealed from the final decree herein, to the next United States Circuit Court of Appeals for the Ninth Circuit, and desiring to stay the execution of the said decree pending such appeal; and it appearing that said claimant has heretofore given a bond herein, in the sum of Fifteen Thousand Dollars (\$15,000), for the release of said steamship "Jeanie"; and the Court being of the opinion that a further bond in the sum of One Thousand Dollars (\$1,000) is sufficient upon such appeal, as a cost bond and to operate as a supersedeas in said cause, and said libelant consenting to such amount being fixed for such bond on appeal.

NOW, IT IS HEREBY ORDERED AND DECREED that the appeal bond to be given on such appeal be, and the same is, hereby fixed at the sum of One Thousand Dollars (\$1,000), which [471] sum shall operate as a supersedeas in said cause.

Dated at Seattle, Washington, this 30th day of July, 1915.

JEREMIAH NETERER,  
United States District Judge.

We hereby consent to the making of the foregoing order, and acknowledged receipt of a copy thereof.

Dated at Seattle, Washington, this 30th day of July, 1915.

KERR & McCORD,  
C. H. HANFORD,  
Proctors for Libelant.

[Indorsed]: Order Fixing Supersedeas Bond on Appeal. Filed in the District Court, Western Dist. of Washington, Northern Division. July 31, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [472]

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*In the United States District Court for the Western District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

The Steamship "JEANIE," Her Tackle, Apparel,  
Furniture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

### **Assignment of Errors.**

Comes now the above-named Alaska Coast Company, a corporation, claimant in the above-entitled cause, and says that in the record and proceedings in said cause, and in the decree made and entered therein, on the 12th day of July, 1915, there are manifest errors in the following particulars:

#### I.

That the said Court erred in holding, finding and decreeing that the said steamship "Jeanie" was unseaworthy upon the voyage in question in said cause.

#### II.

That the said Court erred in holding, finding and decreeing that there was an oral understanding or

agreement for the transportation of the cargo involved in said cause upon the said steamship upon the said voyage. [473]

## III.

That the said Court erred in holding, finding and decreeing that no bills of lading for the transportation of said cargo upon said vessel on the said voyage were delivered to any officer or authorized agent of said libellant; and that the watchmen to whom such bills of lading were delivered were utter strangers to any responsible or authoritative head of said libellant company.

## IV.

That the said Court erred in holding, finding and decreeing that the bills of lading, issued and delivered for the transportation of said cargo upon said vessel on said voyage, were not binding upon the parties hereto, but were inoperative, and that said vessel and claimant herein were not released from liability for all or any part of the damage to said cargo upon said vessel on said voyage by reason of the failure of said libellant to comply with the terms and conditions of said bills of lading relative to filing claim and commencing suit for such damage.

## V.

That the said Court erred in holding, finding and decreeing that said vessel, and claimant herein, were not exempt from liability for all or any part of the damage to said cargo upon said vessel on said voyage, under the terms of the Act of Congress commonly known as the Harter Act.

## VI.

That the said Court erred in holding, finding and decreeing that the said vessel, and claimant herein, are liable to libelant for all or any part of the damage to said cargo upon said vessel on said voyage.

[474]

## VII.

That the said Court erred in awarding and decreeing to libelant herein as and for its damage, on account of injury or damage to said cargo upon said vessel on said voyage, the sum of Four Thousand Two Hundred Eighty-three and 6/100 Dollars (\$4,283.06), or any part thereof as the cost of reconditioning said cargo, in that said award was not warranted by the evidence herein and was and is excessive and erroneous.

## VIII.

That the said Court erred in awarding and decreeing to libelant herein, as and for its damage on account of injury or damage to said cargo upon said vessel on said voyage, the sum of Seven Thousand Nine Hundred Thirty-five Dollars (\$7,935), or any part thereof, as the amount of depreciation of the market price of said cargo during the period of reconditioning such cargo, in that said award was not warranted by the evidence herein, and the law applicable thereto.

## IX.

That the said Court erred in holding, finding and decreeing that libelant herein is entitled to recover any amount whatever herein against said vessel, or claimant or its stipulator herein, on account of de-

preciation in market price of said cargo; and in awarding and decreeing to libelant any sum whatever as and for such depreciation in market price.

X.

That the said Court erred in entering judgment herein in favor of said libelant in any amount whatsoever. [475]

XI.

That the said Court erred in refusing to enter judgment herein in favor of claimant, and dismissing said libel, with costs to appellant.

WHEREFORE, claimant herein prays that the said decree may be reversed, modified and corrected in the particulars herein set forth, and such decree entered therein as ought to have been entered by the said District Court.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Claimant.

Service of the within assignment of errors, and receipt of a copy thereof, admitted this — day of July, 1915.

KERR & McCORD,

C. H. HANFORD,

Proctors for Libelant and Appellee.

[Indorsed]: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 31, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [476]



*In the United States District Court for the Western  
District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

The Steamship "JEANIE," Her Tackle, Apparel,  
Furniture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

**Citation on Appeal [Copy].**

United States of America,—ss.

The President of the United States, to Alaska Pacific Fisheries, a Corporation, Libelant Herein, and to Messrs. Kerr & McCord, and C. H. Hanford, Esquire, Its Proctors Herein, Greeting:

YOU ARE HEREBY CITED AND ADMONISHED TO BE AND APPEAR before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, California, within thirty (30) days from the date hereof, pursuant to an appeal to the said Court duly filed in the office of the Clerk of the United States District Court for the Western District of Washington, Northern Division, wherein the said [477] Alaska Coast Company, a corporation, is appellant, and you, the said Alaska Pacific Fisheries, are appellee, then and there to show cause, if any there be, why the decree of the United States District Court for the Western

District of Washington, Northern Division, in the above-entitled cause, dated July 12, 1915, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States of America, this 31st day of July, 1915.

[Seal] JEREMIAH NETERER,  
Judge of the United States District Court for the  
Western District of Washington.

Due service of the within citation, after the filing of the same in the office of the Clerk of the above-entitled Court, is hereby admitted this 31st day of July, 1915.

KERR & McCORD,  
C. H. HANFORD,  
Proctors for Libelant and Appellee.

[Indorsed]: No. 2570. Original. In the District Court of the United States, Western District of Washington, Northern Division. Alaska Pacific Fisheries, a Corporation, Libelant, vs. The Steamship "Jeanie," Her Tackle, Apparel, Furniture, etc., Respondent. Alaska Coast Company, a Corporation, Claimant. Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 31, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. Bogle, Graves, Merritt & Bogle, 609-616 Central Building, Seattle, Washington, Proctors for Claimant. [478]

*In the United States District Court, for the Western  
District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

The Steamship "JEANNIE," Her Tackle, Apparel,  
Furniture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS,  
That we, Alaska Coast Company, a Corporation, as  
principal, and United States Fidelity & Guaranty  
Company, a corporation, duly authorized to do busi-  
ness in the State of Washington and act as surety  
therein, as surety, are held and firmly bound unto  
Alaska Pacific Fisheries, a corporation, libelant  
above named, in the sum of One Thousand Dollars  
(\$1,000), lawful money of the United States, to be  
paid to said Alaska Pacific Fisheries, for which pay-  
ment, well and truly to be made, we bind ourselves,  
our and each of our successors and assigns, jointly  
and severally, firmly by these presents.

Sealed with our seals and dated at Seattle, this 2d  
day of August, 1915.

WHEREAS, the said Alaska Coast Company, a  
corporation, principal herein, has lately appealed to  
the next United [479] States Circuit Court of

Appeals, for the Ninth Circuit, from the final decree made and entered in the above-entitled Court on the 12th day of July, 1915, and having filed its assignment of errors in the office of the Clerk of said Court, and a citation was duly issued in said cause on such appeal; and said Court having fixed the amount of the bond on such appeal in order to stay the execution of such decree.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the above-named Alaska Coast Company, appellant in said cause, and principal herein, shall prosecute said appeal to effect and pay all costs which may be awarded against it as such appellant, if the appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit, in this cause, or on the mandate of said Court by the Court below, then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

ALASKA COAST CO.

By R. J. RINGWOOD,

Its Manager.

UNITED STATES FIDELITY AND  
GUARANTY COMPANY.

[Seal]

By JOHN C. McCOLLISTER,

Attorney in Fact.

Sealed and delivered, and taken and acknowledged this 2d day of August, 1915, before me.

[Seal]

C. F. RIDDELL,

Notary Public in and for the State of Washington,  
Residing at Seattle. [480]

The foregoing bond approved as to form, amount and sufficiency of surety, and receipt of copy acknowledged, and notice of filing waived, this 2d day of August, 1915.

KERR & McCORD,  
C. H. HANFORD,

Proctors for Libelant and Appellee.

The foregoing bond and the sufficiency of the surety thereon is on this 6th day of August, 1915, approved as an appeal and supersedeas bond by the undersigned.

JEREMIAH NETERER,  
United States District Judge.

[Indorsed]: Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Aug. 6, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [481]

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*In the United States District Court, for the Western  
District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

The Steamship "JEANNIE," Her Tackle, Apparel,  
Furniture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

**Stipulation for Order Extending Time to File  
Apostles on Appeal.**

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, through their respective proctors herein, that an order may be made and entered herein, extending the time within which the apostles on appeal herein shall be filed in the United States Circuit Court of Appeals for the Ninth Judicial Circuit, at San Francisco, California, to and including Saturday, the 4th day of September, 1915, and that said cause shall be docketed for hearing upon the appeal therein at the next term of said Court of Appeals, to be held at San Francisco, California, commencing on the first Monday in October, 1915.

Dated at Seattle, Wash., this 30th day of August, 1915.

C. H. HANFORD and  
KERR & McCORD,

Proctors for Libelant and Appellee.

BOGLE, GRAVES, MERRITT & BOGLE,  
Proctors for Claimant and Appellant. [482]

[Indorsed]: Stipulation for Order Extending Time to File Apostles on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Aug. 30, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [483]

*In the United States District Court, for the Western  
District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

The Steamship "JEANNIE," Her Tackle, Apparel,  
Furniture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

**Order Extending Time to File Apostles on Appeal.**

In pursuance of a stipulation of the parties hereto,  
and good cause appearing therefor.

It is ORDERED that the Alaska Coast Company,  
appellant in the above cause, may have to and in-  
cluding the 4th day of September, 1915, within which  
to procure to be filed in the United States Circuit  
Court of Appeals for the Ninth Circuit, at San Fran-  
cisco, California, the Apostles on Appeal in the  
above-entitled cause, certified by the Clerk of the  
above-named court.

Done in open court this 30th day of August, 1915.

JEREMIAH NETERER,

Judge.

O. K.—

C. H. HANFORD and  
KERR & McCORD,

Proctors for Libelant and Appellee.

BOGLE, GRAVES, MERRITT & BOGLE,  
Proctors for Claimant and Appellant. [484]

[Indorsed]: Order Extending Time to File Apostles on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Aug. 30, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [485]

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*In the United States District Court, for the Western District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

The Steamship "JEANNIE," Her Tackle, Apparel,  
Furniture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

**Praeceptum for Apostles on Appeal.**

To the Clerk of the Above-entitled Court:

You will please prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, the Apostles on Appeal in the above-entitled cause, pursuant to the rules of said Circuit Court of Appeals; and please include in such Apostles the following:

1. A caption exhibiting the proper style of the Court and the title of the cause.
2. A statement showing the time of the commencement of the suit (September 29, 1913).
3. The names of the parties.



4. The several dates when the respective pleadings were filed. [486]
5. Statement showing whether or not the defendant was arrested, or bail taken, or property attached, or arrested, and an account of the proceedings thereunder.
6. The time when the trial was had.
7. The name of the Judge hearing the same.
8. Statement that no question was referred to a Commissioner.
9. The date of the entry of final decree (July 12, 1915).
10. The date when notice of appeal was filed (July 30, 1915).
11. All the pleadings, with the exhibits annexed thereto, including in such pleadings the following:
  - (a) Libel, filed September 29, 1913.
  - (b) Answer to Libel, filed October 13, 1913.
  - (c) Amended Libel, filed March 21, 1914.
  - (d) Amended Answer, filed March 25, 1914.
  - (e) Second Amended Libel, filed February 17, 1915.
  - (f) Stipulation, filed March 30, 1915.
12. All the testimony and other proofs adduced in the cause, including the following:
  - (a) Testimony taken before and reported by A. C. Bowman, U. S. Commissioner.
  - (b) All exhibits filed, viz.—Libelant's Exhibits "A" and "B" and Respondent's Exhibits 1, 2, 3, 4, 5, 6 and 7.

- (c) Deposition of Thomas Cochrane, with stipulation for taking same.
  - (d) Deposition of T. Banbury, with stipulation for taking same.
  - (e) Stipulation as to facts, filed March 21, 1914.
13. Memorandum decision, filed June 25, 1915.  
[487]
  14. Final Decree, filed July 12, 1915.
  15. Notice of Appeal, with admission of service, filed July 30, 1915.
  16. Order Fixing Amount of Stay Bond, with approval thereof, filed July 31, 1915.
  17. Assignment of Errors, with admission of service, filed July 31, 1915.
  18. Original Citation on Appeal, with admission of service, filed July 31, 1915.
  19. Copy of Citation.
  20. Bond on Appeal, with approval thereof, filed August 6, 1915.
  21. This praecipe, filed August 3, 1915.

Dated this 30th day of August, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,  
Proctors for Claimant and Appellant.

[Indorsed]: Praecipe for Apostles on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Aug. 30, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.  
[488]

*In the District Court of the United States, for the  
Western District of Washington, Northern Di-  
vision.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

S. S. "JEANIE," Her Tackle, Apparel, Furniture,  
etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

**Certificate of Clerk U. S. District Court to Apostles,  
etc.**

United States of America,  
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 488 pages, numbered from 1 to 488, inclusive, to be a full, true and correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitutes the record on appeal to the said Circuit Court of Appeals for the Ninth Circuit from the District Court of the

United States for the Western District of Washington. [489]

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Proctors for Claimant and Appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S.)	
for making record, certificate	
or return, 1173 folios at 15c..	\$175.95
Certificate of Clerk to transcript of	
record, 4 folios at 15c.....	.60
Seal to said Certificate.....	.20
Certificate of Clerk to Original Ex-	
hibits 3 folios at 15c.....	.45
Seal to said Certificate.....	.20

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Total—\$177.40

I hereby certify that the above cost for preparing and certifying record amounting to \$177.40 has been paid to me by Messrs. Bogle, Graves, Merritt & Bogle, Proctors for Claimant and Appellant.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, this 1st day of September, 1915.

[Seal]

FRANK L. CROSBY,  
Clerk United States District Court. [490]

*In the United States District Court for the Western  
District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,  
Libelant,

vs.

The Steamship "JEANNIE," Her Tackle, Apparel,  
Furniture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,  
Claimant.

**Citation on Appeal (Original).**

United States of America,—ss.

The President of the United States, to Alaska Pacific Fisheries, a Corporation, Libelant herein, and to Messrs. Kerr & McCord, and C. H. Hanford, Esquire, Its Proctors Herein, Greeting:

YOU ARE HEREBY CITED AND ADMONISHED TO BE AND APPEAR before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, California, within thirty (30) days from the date hereof, pursuant to an appeal to the said Court duly filed in the office of the Clerk of the United States District Court for the Western District of Washington, Northern Division, wherein the said [491] Alaska Coast Company, a corporation, is appellant, and you, the said Alaska Pacific Fisheries, are appellee, then and there to show cause, if any there be, why the decree of the

United States District Court for the Western District of Washington, Northern Division, in the above-entitled cause, dated July 12, 1915, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States of America, this 31st day of July, 1915.

[Seal] JEREMIAH NETERER,  
Judge of the United States District Court for the  
Western District of Washington.

Due service of the within citation, after the filing of the same in the office of the Clerk of the above-entitled Court, is hereby admitted this 31st day of July, 1915.

KERR & McCORD,  
C. H. HANFORD,

Proctors for Libelant and Appellee. [492]

[Endorsed]: No. 2570. (Original.) In the District Court of the United States, Western District of Washington, Northern Division. Alaska Pacific Fisheries, a Corporation, Libelant, vs. The Steamship "Jeannie," Her Tackle, Apparel, Furniture, etc., Respondent, Alaska Coast Company, a Corporation, Claimant. Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jul. 31, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

[Endorsed]: No. 2647. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Coast Company, a Corporation, Claimant of the Steamship "Jeannie," Her Tackle, Apparel, Furniture, etc., Appellant, vs. Alaska Pacific Fisheries, a Corporation, Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed September 4, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

